



GUIDELINES

The Newsletter of the New Jersey State Ethics Commission

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THE STATE ETHICS COMMISSION

Chair Paula A. Franzese, Vice-Chair Rolando Torres, Jr., Commissioner John J. Farmer, Jr., Commissioner Sharon Ann Harrington, Commissioner David J. Socolow, Commissioner William E. Schuler; Executive Director Rita L. Strmensky

CONTENTS

New Commission Appointed	Page 1
Summary of Conflicts Law Amendments	Page 2
2006 Financial Disclosure Statements	Page 2
Proposed Rules	Page 3
Training Update	Page 16
Compliance Update	Page 17
Commission Cases	Page 17

NEW COMMISSION APPOINTED

On February 16, 2006, Governor Corzine appointed seven members to the State Ethics Commission ("Commission"). Under a 2006 amendment to the Conflicts of Interest Law, the Commission consists of four public members, not more than two of whom shall be of the same political party, and three Executive Branch employees. Executive Branch members serve at the pleasure of the Governor during the term of the Governor appointing the member and until the member's successor is appointed and qualified. Public members serve for staggered terms of four years and until the appointment and qualification of their successors. The Governor designates one public member to serve as chairman and one member to serve as vice-chairman of the Commission.

The current public members are former state Senator Bill Schluter, former Attorney General John Farmer, and Paula Ann Franzese, Commission Chair. There currently is one public member vacancy. The State officials who serve on the Commission are Personnel Commissioner Rolando Torres, Acting Labor Commissioner David Socolow; and Motor Vehicle Commission Chief Administrator Sharon Harrington.

Paula Franzese is the Peter W. Rodino Professor of Law

at Seton Hall University Law School. Professor Franzese is the seven-time recipient of the Student Bar Association's Professor of the Year Award and was ranked the Top Law Professor in New Jersey by the New Jersey Law Journal. In 2005, Professor Franzese was appointed by Governor Jon Corzine to serve on the gubernatorial transition team's Ethics and Policy Management Task Force. In 2004, Professor Franzese and former Supreme Court Justice Daniel J. O'Hern were appointed Special Ethics Counsel to Governor Codey. In that capacity, they submitted the most comprehensive ethics audit and reform agenda of its kind, resulting in significant ethics reform of the Executive Branch of State government. Previously, Professor Franzese was appointed by Governor Whitman to serve as Commissioner of the New Jersey Election Law Enforcement Commission and, in 2000, she was elected Vice-Chair of the Commission, where she served until 2004.

Senator Schluter represented the 23rd legislative district until January 2002. Previously he represented his district in the State Assembly. Schluter authored legislation to bring further transparency to lobbying, legislative activities, campaign finance and public contracts. Prior to his legislative service, Schluter was vice-president and a founding partner of the environmental management firm, New Jersey First, Inc. He earned an Artium Baccalaureatus from Princeton University.

John Farmer, who served as state Attorney General in the Whitman and DiFrancesco administrations, is currently a partner at the Newark offices of Kirkpatrick & Lockhart, Nicholson and Graham. Previously, Farmer served as senior counsel on the 9/11 Commission, Chief Counsel to Governor Whitman and Assistant U.S. Attorney for the District of New Jersey. Farmer earned a Juris Doctor from

the Georgetown University Law Center and a Bachelor of Arts from Georgetown University.

SUMMARY OF JANUARY 2006 CONFLICTS LAW AMENDMENTS

The Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., was amended in January 2006. The following is a summary of the major changes, which took effect on March 15, 2006.

Renames the Executive Commission on Ethical Standards to the State Ethics Commission ("Commission").

Changes, as of January 17, 2006, the membership of the Commission to seven members, three from among State officers and employees and four from the public.

Requires the Commission to employ a full-time training officer and a full-time compliance officer, each of whom has specified duties.

Requires periodic training on ethics standards for State officers and employees and special State officers and employees.

Permits the Commission to impose a civil penalty of between \$500 and \$10,000 for violations of post-employment restrictions by former State officers and employees and special State officers and employees.

Provides the Commission with jurisdiction over former State officers and employees.

Requires an investigation of a violation committed during State service be commenced within two years of the termination of service.

Provides the Commission with authority to dismiss frivolous complaints.

Permits the Commission to order restitution, demotion, censure or reprimand for an ethics violation.

Imposes a civil penalty of \$50 per day for a failure to file a financial disclosure statement.

Provides the Commission with explicit authority to promulgate regulations.

Requires the Commission to communicate with the State Auditor, State Inspector General, the State Commission of Investigation and the Office of Government Integrity.

Requires the Commission director to meet with the members of the Governor's cabinet individually when appointed, and annually as a group, for an ethics briefing.

Requires the Commission to create a toll-free telephone number for comments, complaints and questions, and makes information and questions received confidential.

Requires financial disclosure statements to be made public on the Internet.

Requires the Commission to prepare and distribute a plain language ethics guide. Each State officer and employee and special State officer and employee must certify that he/she has received the guide, reviewed it and understands its provisions.

Provides the Commission with authority to enforce an Executive Order if the order so provides.

Increases the fine for a violation of the ethics laws that is punishable as a disorderly persons offense from \$500 to \$1,000.

Requires the Commission to develop a uniform ethics code by September 11, 2006, which would be the primary code supplemented by individual State agency ethics codes.

Provides that the travel reimbursement or payment limitation for travel outside of New Jersey does not apply if the reimbursement or payment is made by the federal government, an agency of another state or two or more states or any political subdivision of another state.

Moves the Anti-Nepotism Law to the Conflicts of Interest Law and adds a prohibition on a State officer or employee or a special State officer or employee supervising or exercising authority with regard to personnel actions over a relative. Relative is defined as your spouse or your or your spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to you or your spouse by blood, marriage or adoption.

Makes the provisions of the Conflicts of Interest Law applicable to staff of a Governor-elect compensated with public funds and requires them to undergo ethics training and, if directed by the Governor-elect, to file financial disclosure statements and ethics compliance certifications.

Prohibits the receipt of any gifts from governmental affairs agents by State officers or employees in the Executive branch.

Requires the State Treasurer to post on the Internet a business ethics guide prepared in accordance with Executive Order No.189 (Kean, 1988) and requires those who seek to submit a bid, or negotiate for a State contract, to provide a certification that the bidder has read, understood and complied with the guide.

2006 Financial Disclosure Statements

A number of changes have been made to the 2006 Financial Disclosure Statement ("FDS") as a result of recent amendments to the Conflicts Law and the issuance of Executive Order No. 1 (Corzine, 2006).

Financial Disclosure Statements were due on Wednesday, May 17, 2006.

The following reflects the major changes in the 2006 FDS.

Domestic Partners. Domestic partners of State employees and State officers are now included within the purview of E.O. 1. New Jersey's Domestic Partnership Act, *N.J.S.A. 26:8A-4(b)*, creates a legal status that is available both to same-sex couples and to opposite-sex couples over age 62. To register for a New Jersey domestic partnership, a couple must share a common residence, be engaged in a "committed relationship of mutual caring," and agree to support one another if the need arises. They must also demonstrate existing financial interdependence like a joint mortgage, bank account, or designation of one in the other's will. Closely related individuals cannot enter into a domestic partnership. Both persons must be at least 18 years of age. Both persons must file jointly an Affidavit of Domestic Partnership.

State Employment – Relatives. The Conflicts Law was amended in January 2006 to include a nepotism provision. Filers must indicate on their FDS whether they have a relative(s) employed in an unclassified State position and, if so, provide the name(s) of the individual(s). Unclassified service means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or *N.J.A.C. 4A:1-1.1 et seq.* The filer must also indicate whether he/she exercises authority, supervision or control, including personnel actions, over the relatives.

For the purpose of the nepotism provision, relative means the filer's spouse or his/her spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the filer or his/her spouse by blood, marriage or adoption.

Value Classes. Under E.O. 1, the current value class, F = greater than \$250,000, has been changed to greater than \$250,000 but not more than \$500,000. An additional value class has been added, G = greater than \$500,000.

Sources of Income. Under E.O. 1, sources of income now include "gifts and other gratuities (cash or non-cash)."

Additions to Required Filers. Under E.O. 1, the chiefs of staff of the principal departments are now required to file FDSs. In addition, members of approximately 33 boards, commissions and independent authorities have been added to the list of required filers.

Definition of relative. For the purposes of E.O. 1, the definition of "relative" in Section I, Paragraph 6(e) now includes spouse and domestic partner.

Interest in Closely-Held Corporations or Similar Entities. Regular State employees are prohibited from

retaining any interest in any closely-held corporation, partnership, sole proprietorship, or similar business entity doing business with any New Jersey State, interstate or local government entity but are not flatly prohibited from doing business with the federal government and out-of-state government entities.

Pursuant to Section III.1.c of Executive Order No. 1, contracts awarded after public notice and competitive bidding as provided by the Local Government Contracts Law, *N.J.S.A. 40A:11-1 et seq.*, and similar provisions contained in other applicable public bidding laws, are permitted, with the prior approval of the State Ethics Commission.

Training. The Conflicts Law was amended in January 2006 to include a mandatory training provision. Filers must indicate whether they have completed ethics training and, if so, the date of the training, whether training was in-person or on-line and whether training was provided by the agency or the State Ethics Commission.

Late Filing Fee. The Conflicts Law was amended in January 2006 to provide for the assessment of a \$50 per day late filing fee.

E.O. 1 Also Includes the Following New Provisions

Prohibition on Outside Income. The Governor may from time to time direct that the prohibition on outside earned income applicable to the Governor, Cabinet members and Cabinet-level appointees, pursuant to *N.J.S.A. 52:13D-24 (d)*, also be applied to additional positions in the Office of the Governor.

Code of Conduct for the Governor. The code of conduct for the Governor, set forth in Executive Order No. 77, is continued and shall be applied to the position of Governor.

Enforcement Authority. The Commission has been granted authority to enforce the provisions of E.O. 1.

PROPOSED RULES

OTHER AGENCIES STATE ETHICS COMMISSION

State Ethics Commission Rules

Proposed Readoption with Amendments: N.J.A.C. 19:61

Proposed New Rules: N.J.A.C. 19:61-2.3, 5.6 and 5.7

Authorized By: State Ethics Commission, Rita L. Strmensky, Esq., Executive Director.

Authority: *N.J.S.A. 52:13D-12 et seq.*

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-135

Submit written comments by June 30, 2006 to:

Rita L. Strmensky, Esq.
Executive Director
State Ethics Commission
P.O. Box 082
Trenton, New Jersey 08625-0082

The agency proposal follows:

Summary

The State Ethics Commission (Commission) has determined that the comment period for this proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a) 5, this proposal is excepted from the rulemaking calendar requirement.

Pursuant to N.J.S.A. 52:14B-5.1.c, [N.J.A.C. 19:61](#) expires on March 26, 2007. The rules govern the organization, jurisdiction, proceedings, advisory opinions, standards and general operations of the Commission. The Commission has reviewed the rules and finds that, with the new rules and amendments proposed herein, the rules continue to be necessary, reasonable and proper for the purposes for which they were originally intended.

A summary of the subchapters of [N.J.A.C. 19:61](#) follows:

Subchapter 1 provides the organizational rules that govern the conditions under which the Commission meets (presiding member, quorum, executive or open meetings), specifies the rules that govern Commission actions (the voting requirements, the resolution of conflicts with agency rules in favor of the Commission's rules), and provides for reasonable extensions of time for action under the Commission's rules as well as for the appointment of the administrative head of the Commission.

Subchapter 2 states the Commission's jurisdiction over State officers and employees and special State officers and employees of the Executive Branch of government.

Subchapter 3 outlines the Commission's handling of an allegation from its inception to the Commission's final determination.

Subchapter 4 sets forth who may request advisory opinions. The Commission considers all requests for opinions on a case-by-case basis, and State employees should not rely on previous opinions that may not, in the Commission's view, apply to their particular circumstances. The subchapter also clarifies the discretion of the Executive Director with regard to the format of requests for advisory opinions to be addressed by the Commission and permits written or oral requests as may be appropriate to the circumstances of the request.

Subchapter 5 sets forth the Commission's power to undertake investigations, hold hearings, and issue opinions. This subchapter also sets forth the positions in State government that have responsibility for matters affecting casino activity.

Subchapter 6 formalizes standards for State officers and employees and special State officers and employees regarding attendance at events, acceptance of compensation for published works and the use of one's official title for private fundraising.

Subchapter 7 provides State officials with guidelines for determining when recusal is necessary, and establishes a formal recusal process.

Summary of General Amendments Proposed

Pursuant to P.L. 2005, c. 382, the name of the Commission has been changed from the "Executive Commission on Ethical Standards" to the "State Ethics Commission." Throughout the text, all references to "Executive Commission on Ethical Standards" have been changed to "Commission" or "State Ethics Commission." The term "State official" is defined in the existing rules to include a State officer or employee and a special State officer or employee. Throughout the text, all references to State officer or employee and special State officer or employee have been changed to "State official."

Throughout the text, references to the terms "departmental" or "Department" have been changed to "agency" or "State agency" for consistency. Pursuant to P.L. 2005, c. 382, the Commission shall promulgate a uniform ethics code to govern and guide the conduct of State officials in the Executive Branch. The uniform ethics code shall be the primary code of ethics for State agencies. Accordingly, references to the uniform ethics code have been added throughout the text to existing references to ethics codes, rules or regulations where the context refers to guidelines to which State officials are bound.

Throughout the text, citations, grammar, punctuation, spelling and agency names have been revised or updated for technical accuracy.

Summary of Specific Amendments Proposed

P.L. 2005, c. 382 changed the number of persons appointed to the Commission from nine to seven. The proposed amendment to N.J.A.C. 19:61-1.4 changes the number of members necessary to constitute a quorum from five to four. At N.J.A.C. 19:61-1.10, proposed definitions of "cohabitant" and "financial disclosure statement", "relative" and "State agency" have been added. These terms are used in proposed new rules at N.J.A.C. 19:61-5.6 and 5.7. Existing definitions of "person", and "State official" have been relocated from N.J.A.C. 19:61-6.2 to N.J.A.C. 19:61-1.10.

At N.J.A.C. 19:61-2.1, a proposed amendment incorporates

the statutory expansion of the jurisdiction of the Commission (N.J.S.A. 52:15A-3). At N.J.A.C. 19:61-2.2, the proposed amendments require preparation and distribution of a uniform ethics code, establish the uniform ethics code as the primary code, and codify the existing procedure for approving an agency code of ethics (N.J.S.A. 52:13D-21). The heading of existing N.J.A.C. 19:61-2.2 has been amended to be consistent with the multiple codes of ethics provided for in the proposed amendments. Mandatory provisions for agency codes of ethics are proposed for deletion in subsection (c) (recodified as (b) 3), (d) and (e), as these provisions will be incorporated into the uniform ethics code. Proposed new N.J.A.C. 19:61-2.3 requires preparation by the Commission and distribution of a plain language ethics guide (N.J.S.A. 52:13D-21). N.J.A.C. 19:61-2.3 through 2.5 have been recodified as N.J.A.C. 19:61-2.4 through 2.6.

At N.J.A.C. 19:61-3.1, proposed amendments establish a time frame for commencing an investigation of a former State official, the authority of the Commission to dismiss a frivolous complaint, and additional penalties for ethics violations (N.J.S.A. 52:13D-21). The chapter law references have been deleted from N.J.A.C. 19:61-5.4, as the Commission believes the statutory reference is sufficient.

Proposed new N.J.A.C. 19:61-5.6 sets forth the procedures for identifying and contacting persons required to file financial disclosure statements, the statutory penalty for failure to file a financial disclosure statement authorized by N.J.S.A. 52:13D-21, and the provisions for making filed financial disclosure statements available on the Internet as required by N.J.S.A. 52:13D-21.

Proposed new N.J.A.C. 19:61-5.7 codifies the anti-nepotism provisions of N.J.S.A. 52:13D-21.2, and the Commission's official position with respect to workplace supervision of a relative or cohabitant.

The definitions of "Commission," "person" and "State official" are proposed for deletion at N.J.A.C. 19:61-6.2. These definitions either already exist or are proposed for amendment at N.J.A.C. 19:61-1.10. A proposed amendment to the definition of "approval" deletes the reference to acceptance of honorarium or fee. In accordance with N.J.S.A. 52:13D-24, a State official is not permitted to accept an honorarium or fee in connection with a speech or presentation made during attendance at an event. Amendments to the definitions of "event" and "supplier" have been proposed to ensure that requests to attend events sponsored by public entities that contract with a State agency are appropriately reviewed.

Proposed amendments at N.J.A.C. 19:61-6.4 and 6.5 incorporate the provisions of P.L. 2005, c. 382 that allow various governmental sources to reimburse the State for reasonable out-of-State travel expenses that exceed \$500.00. A proposed amendment at N.J.A.C. 19:61-6.7(d) eliminates the requirement that a State official indicate that his or her views do not represent those of the State, since

the official is already prohibited from identifying himself or herself as a State official. Proposed amendments to N.J.A.C. 19:61-6.8 require State agencies to use the approval request form included in the Commission's rules when seeking approval to attend an event. The use of the standardized form by all State officials will facilitate the proper review of these forms by State agencies. Additional questions have been added to the form to elicit information necessary to determine permissible payment of expenses associated with attendance at the event. Use of the form to request approval to accept compensation for published works has been deleted. The form is not structured to accommodate that type of request. References to the names of State agencies in the examples provided in this subchapter have been updated to reflect current agency names.

Proposed deletions at N.J.A.C. 19:61-6.10 reflect the recent statutory amendment to N.J.S.A. 52:13D-24.1 that no longer permits a State official to accept a thing of value (up to \$250.00 per calendar year) from a lobbyist or government affairs agent.

The definitions of "person," "State agency" and "State official" have been deleted from N.J.A.C. 19:61-7.3. These definitions are now found at N.J.A.C. 19:61-1.10. Proposed amendments to N.J.A.C. 19:61-7.4 clarify the scope of matters that require recusal by the State official. The sample recusal statements in the chapter Appendix have been amended to include the items of information required by N.J.A.C. 19:61-7.5(b).

Social Impact

The effect of the rules proposed for readoption and proposed new rules and amendments (rules) is to provide a procedural framework within which the Commission can administer and enforce the Conflicts of Interest Law, [N.J.S.A. 52:13D-12](#) et seq. The Conflicts Law was enacted and the Commission was created in response to an atmosphere of public distrust of public officials and employees in the early 1970s. The Commission is empowered to enforce the statute as a means of ensuring propriety and preserving public confidence in persons serving in government. The Commission also endeavors to provide standards and guidance to aid State officers and employees in their desire to conform their conduct in ways designed to avoid conflicts of interest outlined in the law. Many of the new rules and proposed amendments to N.J.A.C 19:61 are required by P.L. 2005, c. 382.

The rules will affect employees and appointees of the Executive Branch of State government and the general public. The rules will have a beneficial social impact in that any person who wishes to file a complaint with the Commission, and State officers and employees or special State officers or employees who are the subjects of a complaint or who wish to seek an advisory opinion from the Commission, will have a clear set of rules governing the handling of such matters by the Commission. In addition, the rules have the beneficial impact of providing standards

by which agencies disseminate their codes of ethics. The rules will have a beneficial social impact in that there will be a published standard of conduct for all officers and employees. There will also be a beneficial social impact in terms of the public's awareness that there are standards being applied to the conduct of State officials so that they will not be compromised in the discharge of their duties. Further, records will be maintained as to requests for approval for attendance so that State officials and the public will be able to determine the circumstances under which any given State official attended a particular event.

It is anticipated that the rules will enable the Commission to continue to administer and enforce the Conflicts Law to the benefit of the public. The functioning of the Commission has positive consequences to members of the public and to public officials and employees who need to hold the respect and confidence of the people. The public officials and employees who violate the public trust or enter into conflicts of interest will be negatively impacted by these rules in that the Commission has a procedural framework under which to investigate and prosecute violations of the Conflicts Law.

Economic Impact

The rules proposed for readoption with amendments and proposed new rules (rules) will have no discernible economic impact on the public, individual State officers and employees or special State officers and employees or the Commission since the rules simply establish the Commission's organization, jurisdiction, and procedures with regard to complaints, advisory opinions, and other provisions. The rules will have a positive economic impact on State agencies in that they may now accept reimbursement for travel and subsistence expenses that exceed \$500.00 if the expenses are associated with attendance at an out-of-State event sponsored by a Federal agency or an agency or political subdivision of another state.

The rules will have a small economic impact on State agencies because each agency must print sufficient copies of the Plain Language Ethics Guide, the Uniform Ethics Code and the agency Code of Ethics for distribution to its employees. In addition, State agencies must make available various required forms and must retain those forms.

The proposed new rules are not expected to have an economic impact on the Commission. The Commission has already developed a program for the electronic filing of financial disclosure statements. This was accomplished with funds appropriated to the Commission through the established budgetary process. The cost associated with maintaining the program for the electronic filing of financial disclosure statements will be met by the Commission through the established budget process with funds allocated by the State.

Federal Standards Statement

The rules proposed for readoption with amendments and the proposed new rules are not subject to Federal requirements or standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments and proposed new rules will not result in the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments and proposed new rules will have no impact on agriculture in the State of New Jersey.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments and proposed new rules impose no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, [N.J.S.A. 52:14B-16](#) et seq. Therefore, no regulatory flexibility analysis is required. The rules provide standards for the administration and general operations of the Commission, including rules for the filing of complaints, disclosure of interests, and public access to documents.

Smart Growth Impact

The proposed readoption with amendments and new rules will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at [N.J.A.C. 19:61](#).

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

Chapter 61

[Executive] State Ethics Commission [on Ethical Standards]

19:61-1.1 Scope of rules

The rules in this chapter shall constitute the practices and procedures of the State Ethics [Executive] Commission [on Ethical Standards] and shall govern all activities of the Commission pursuant to N.J.S.A. 52:13D-12 et seq.

19:61-1.4 Quorum

[Five] Four members of the Commission shall constitute a quorum. If a quorum does not attend a session of the Commission, the presiding member may adjourn the Commission, or, in the absence of all the members, the Executive Director or his or her designee may adjourn the

Commission from day to day.

19:61-1.10 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Chair” and “Vice Chair” shall mean the members of the [Executive] Commission [on Ethical Standards] designated by the Governor to serve as the Chair and Vice Chair thereof.

“Cohabitant” shall mean any person, whether related by blood or adoption or not, who is actually residing with the State official.

“Commission” shall mean the [Executive] State Ethics Commission [on Ethical Standards] continued and established in but not of the Department of Law and Public Safety by the provisions of N.J.S.A. 52:13D-12 et seq.

“Financial disclosure statement” means a comprehensive statement of assets, liabilities, business interests and sources of income which persons occupying certain positions in State government are required to file annually with the Commission pursuant to statute or Executive Order.

“Person” means any natural person, government entity, association, organization, firm, partnership or corporation.

“Preliminary investigation” means the investigative process undertaken by the Commission and/or its staff and/or a [departmental] State agency’s ethics liaison officer or [departmental] State agency’s ethics committee with regard to an allegation prior to review of and final action on the allegation by the Commission at a public meeting, pursuant to either N.J.A.C. 19:61-3.1(h) or (i).

“Relative” shall mean an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption.

“State agency” means any of the principal departments in the Executive Branch of the State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

“State official” shall mean any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e).

19:61-2.1 Jurisdiction of the Commission

(a) The jurisdiction of the Commission shall extend to those situations arising under the provisions of N.J.S.A. 52:13D-12 et seq., involving current and former State [officers and employees, and special State officers and employees] officials of the Executive Branch of the government, staff of the Governor-elect compensated pursuant to N.J.S.A. 52:15A-3, and as granted under the provisions of Executive Orders and any other statutes; and the Commission shall also have jurisdiction to enforce the provisions of N.J.S.A. 5:12-58, 59, and 60.

(b) (No change.)

19:61-2.2 [Agency code] Codes of ethics

[(a) State agencies shall include in their Codes of Ethics a requirement that employees annually disclose outside employment and/or business interests. The disclosure procedure shall be formulated by each agency with respect to its particular needs and problems. For example, an agency may find it administratively efficient to exempt disclosure of specific kinds of outside employment (for example, part-time work for businesses not related to the position of employment in the agency).]

(a) The Commission shall adopt a uniform ethics code to govern and guide the conduct of State officials. The uniform code shall be the primary code of ethics for State agencies.

1. Each State agency shall put into place a distribution procedure to ensure that each current State official and each new State official receives a copy of the uniform ethics code. Each State official shall sign a receipt indicating the date on which the uniform ethics code was received and an acknowledgment that the State official is responsible for reading the uniform ethics code and is bound by it. The receipt shall be maintained in the State official’s personnel file.

[(b) All disclosures made in accordance with said Code of Ethics requirements shall be forwarded to the Commission for review.]

(b) Each State agency shall promulgate a code of ethics to address the particular needs and problems of the agency. The agency code of ethics shall be a supplement to the uniform code and shall recognize the uniform code as the primary code.

1. Each State agency shall submit its code of ethics to the Commission for approval.

2. A State agency code of ethics becomes effective upon approval of the Commission.

[(c)] 3. Each State agency shall put into place a distribution procedure to ensure that each current [officer and employee] State official and each new [officer and employee] State official receives a copy of the [Code of Ethics] approved agency code of ethics. Each [officer or employee] State official shall sign a receipt indicating the

date on which the [Code] agency code of ethics was received and an acknowledgment that the [officer or employee] State official is responsible for reading the [Code] agency code of ethics and is bound by it. The receipt shall be maintained in the [officer's or employee's] State official's personnel file. [Each copy of the Code of Ethics shall include a notice to the officer or employee that he or she can seek clarification of the Code's provisions from the agency's ethics liaison officer or from the Executive Commission on Ethical Standards. For the purposes of this subsection, "officer" and "employee" shall include State officers and employees and special State officers and employees as defined by the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.

(d) Each agency code of ethics shall include a provision which expressly prohibits the agency head and deputy and assistant heads from having any personal contractual or business relationship with another officer or employee or special State officer or employee of the agency.

(e) Each agency code of ethics shall provide notice to its State officers and employees and special State officers and employees that in addition to the agency code of ethics they are also subject to the requirements of the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. and applicable regulations of the Executive Commission on Ethical Standards, N.J.A.C. 19:61.]

19:61-2.3 Plain Language Ethics Guide

(a) The Commission shall prepare a plain language ethics guide which provides a clear and concise summary of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning ethical standards applicable to State officials. The guide shall be prepared to promote ethical day-to-day decision making, to give general advice regarding conduct and situations, to provide easy reference to sources, and to explain the role, activities and jurisdiction of the Commission.

(b) Each State agency shall put into place a distribution procedure to ensure that each current State official and each new State official receives a copy of the plain language ethics guide, reviews it and understands its provisions.

Recodify existing N.J.A.C. 19:61-2.3 and 2.4 as 2.4 and 2.5
(No change in text.)

19:61-[2.5] 2.6 Copies of documents; fees

(a) Photocopies of documents maintained by the Commission pursuant to N.J.A.C. 19:61-[2.4] 2.5 shall be provided in accordance with the procedures and fees set forth in N.J.S.A. 47:1A-1 et seq.

(b) (No change.)

19:61-3.1 Allegations; procedure

(a) Every allegation, whether written or oral, received by the Commission shall be reviewed by the Commission's

staff for an initial determination as to whether the alleged conduct falls within the jurisdiction of the Commission.

1. It shall be within the discretion of the Commission to transfer those allegations involving the alleged violation of the uniform ethics code or a code, rule, or regulation promulgated by a State agency, to that agency for disposition in accord with its procedures.

2. (No change.)

3. Any preliminary investigation by a [departmental] State agency's ethics liaison officer or a [departmental] State agency's ethics committee shall be confidential.

(b) The Commission shall promptly conduct and complete a preliminary investigation of all allegations; such investigation may include interviews of the complainant, the State [officer or employee] official involved, and any other individuals who possess knowledge of the circumstances surrounding the alleged conduct. An investigation regarding a violation committed during service by a former State official shall be initiated by the Commission not later than two years following the termination of service.

(c) At the beginning of the preliminary investigation, the Commission shall assign a case number to the allegation.

1. During the course of the preliminary investigation, the allegation shall be identified only by case number, not by the names(s) of the State [officers(s) or employee(s)] official(s) involved.

2. (No change.)

(d) After the conclusion of the preliminary investigation, the Commission shall notify the [employee(s)] State official(s) involved and the head of the [department] State agency employing said State [officer(s) or employee(s)] official(s) of the date of the meeting at which the Commission shall consider the preliminary investigation.

(e) If a Commission member holds office or employment in the same [Department] State agency which employs the State [officer or employee] official named in the allegation, he or she shall disqualify himself or herself from participation in any decisional process relating to that particular case.

(f) The Commission may, after review of the preliminary investigation, refer the allegation to the [department] State agency of the [employee(s)] State official(s) involved for appropriate action.

(g) If the Commission finds that there has been no violation of N.J.S.A. 52:13D-12 et seq., or any code, rule, or regulation promulgated pursuant thereto, as alleged, it shall dismiss the allegation. The Commission shall have the authority to dismiss a complaint that it determines to be frivolous.

(h) - (i) (No change.)

(j) If the Commission determines that the State [officer or employee] official has violated the uniform ethics code, the provisions of N.J.S.A. 52:13D-12 et seq., or any code, rule, or regulation promulgated by any State agency pursuant

thereto, it shall fine said State [officer or employee] official in accordance with the provisions of N.J.S.A. 52:13D-21(i). An assessed penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1).

1. The Commission may further order or direct the State agency employing the State [officer or employee] official to demote, censure or reprimand said State official, to obtain restitution from said State official, or to suspend said [officer or employee] State official for a period not in excess of one year for each violation.

2. Should the Commission find that the conduct of said State [officer or employee] official constitutes a willful and continuous disregard of the provisions of the uniform ethics code, N.J.S.A. 52:13D-12 et seq., or any code, rule or regulation promulgated by any State agency pursuant thereto, it may order or direct the State agency employing the State [officer or employee] official to remove the State [officer or employee] official from his or her office or employment and may further direct that the State agency bar such person from holding any public office or employment in this State in any capacity whatsoever for a period of time not exceeding five years from the date on which he or she was found guilty by the Commission.

19:61-3.4 Allegation before State agency

An allegation of the violation by a State [officer or employee] official of the uniform ethics code or a code, rule, or regulation promulgated by a State agency pursuant to the provisions of N.J.S.A. 52:13D-12 et seq., may be filed with the State agency employing said [officer or employee] State official in accord with the procedures established by the agency to process such allegations. Upon receipt of such allegation, the State agency shall file a copy of same with the Commission. It shall be within the discretion of the Commission to direct the State agency to transfer the allegation to it for hearing in accord with N.J.A.C. 19:61-3.1.

19:61-3.5 Determination by State agency

Notice of all determinations made by State agencies in connection with hearings conducted pursuant to N.J.A.C. 19:61-3.1 shall be filed with [this] the Commission. All determinations with respect to the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. which involve the removal of a State [officer or employee] official or any other disciplinary actions shall be effective when approved by [this] the Commission.

19:61-5.4 Procedures to request Commission action to promulgate, amend or repeal rules

(a) Persons requesting Commission action to promulgate, amend or repeal rules shall comply with [Chapter 27, Laws of New Jersey 1981, Section II (] N.J.S.A. 52:14B-4(f) [)] and any amendments thereto and any implementing rules as adopted by the Office of Administrative Law.

(b) Such persons may obtain forms for petitioning [this] the Commission's Administrative Code Rules[,] from the [Executive] Commission [on Ethical Standards].

(c) When considering the petition, the Commission shall comply with the time lines and procedures contained in [Chapter 27, Laws of New Jersey 1981, Section II (] N.J.S.A. 52:14B-4(f) [)].

19:61-5.5 Positions in State government with responsibility for matters affecting casino activity

(a) The [Executive] Commission [on Ethical Standards] has, in consultation with the Attorney General's Office, determined that the following positions in State government have responsibility for matters affecting casino activity and therefore are subject to the restrictions of the Casino Ethics Amendment (N.J.S.A. 52:13D-17.2):

1.-3. (No change.)

(b) (No change.)

19:61-5.6 Financial disclosure statements

(a) On an annual basis, each State agency shall, upon request of the Commission, identify each State official within the agency who is required by law or Executive Order to file a financial disclosure statement.

(b) The Commission shall provide instructions for filing the financial disclosure statement to each person identified by a State agency as a person required by law or Executive Order to file a financial disclosure statement.

(c) The Commission shall impose a civil penalty for failure to file a financial disclosure statement. The penalty shall be \$50.00 for each day of the violation, and may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1).

(d) A financial disclosure statement required to be submitted to the Commission by law, regulation or executive order shall be made available to the public on the Internet site of the Commission promptly after receipt and review by the Commission.

19:61-5.7 Restrictions on employment

Relatives of persons in the positions in (a) 1 through 6 below in State government are subject to the employment restrictions set forth in this subsection and (b) below.

1. A relative of the Governor shall not be employed in an office or position in the unclassified service of the civil service of the State in the Executive Branch of State government.

2. A relative of a commissioner or head of a principal department in the Executive Branch of State government shall not be employed in an office or position in the unclassified service of the civil service of the State in the principal department over which the commissioner or head of the principal department exercises authority, supervision, or control.

3. A relative of an assistant or deputy commissioner or head

of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the assistant or deputy commissioner or head serves, but shall not be assigned to a position over which the assistant or deputy commissioner or head exercises authority, supervision, or control.

4. A relative of a head or assistant head of a division of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the head or assistant head of a division serves, but shall not be assigned to a position over which the head or assistant head exercises authority, supervision, or control.

5. A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State shall not be employed in an office or position in that independent authority, board, commission, agency or instrumentality.

6. A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency shall not be employed in an office or position in that bi-state or multi-state agency, to the extent permitted by law.

(b) A State official of a State agency in the Executive Branch shall not supervise, or exercise authority with regard to personnel actions over, a relative or cohabitant of the State official.

(c) All State agencies subject to the jurisdiction of the Commission shall develop written procedures that require State officials to disclose information sufficient to determine whether the employment of any individual within the agency is prohibited by (a) or (b) above. A State official shall contact his or her agency ethics liaison officer or the Commission for guidance as necessary to determine whether an employment relationship is prohibited by (a) or (b) above.

SUBCHAPTER 6. ATTENDANCE AT EVENTS, ACCEPTANCE OF HONORARIA, ACCEPTANCE OF COMPENSATION FOR PUBLISHED WORKS, AND ACCEPTANCE OF THINGS OF VALUE

19:61-6.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Approval” means, for the purposes of N.J.A.C. 19:61-6.4 and 6.5, written permission from the department head to attend and/or participate in an event [; to accept an honorarium or fee;] and/or to accept direct or indirect benefits in connection with attendance.

["Commission" means the Executive Commission on Ethical Standards].

...

“Event” means 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 supplier or a non-State government source and the invitation for which is extended to the State official because of his or her official position.

...

["Person" means any natural person, association, organization, firm, partnership or corporation.]

...

["State official" means any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e).]

“Supplier” means any [private sector] person that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to the State official’s agency, including, but not limited to, consultants, vendors and lessors.

...

19:61-6.3 Granting of approval

(a) For the purposes of N.J.A.C. 19:61-6.4 and 6.5, when a department head grants approval to attend an event, the department head shall determine whether a legitimate State purpose will be served by attendance and shall consider the provisions of the Conflicts of Interest Law, the [departmental] uniform ethics code and the agency code of ethics, any applicable Executive Orders, the guidelines and rules of the Commission, any departmental administrative policies and any other relevant considerations. Relevant considerations include, but are not limited to:

1. -3. (No change.)

4. Whether attendance[/] and/or participation in the event will assist the State official in carrying out his or her official duties and support the mission of the agency; and

5. The monetary value and character of the costs[,] and benefits [and/or honoraria] provided by the sponsor, including whether the costs[,] and benefits [and/or honoraria] are comparable to those offered to or purchased by other attendees.

(b) Approval shall be requested in writing on [a] the form [similar to that] provided in N.J.A.C. 19:61-6.8. Such forms shall be retained by the [department] State agency for a period of five years from the date of approval of the form.

(c) (No change.)

19:61-6.4 Attendance at an event sponsored by an interested party

(a)- (b) (No change.)

(c) The requirement and prohibition in (b) above need not apply if the event is designed to provide training, dissemination of information, or the exchange of ideas and the State official is making a speech, is participating in a panel at the event or is an accompanying resource person for the speaker and/or participant, subject to the reasonable approval of the department head. The direct or indirect benefit provided to the State official by the sponsor of the event may include the following:

1. (No change.)

2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500.00 per trip limitation shall not apply if the reimbursement or payment is made by:

i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State; [or]

ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or

iii. Any agency of the Federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(d) – (g) (No change.)

Examples

An employee of the Department of Environmental Protection has been invited to attend a conference of the Association of Environmental Authorities and has been asked to present a short program to explain a new series of forms being proposed by the Department. The Association has offered to waive the \$200.00 conference fee; the conference program includes morning and afternoon refreshments and lunch. If the Department head approves the employee's attendance and participation in the conference, the employee may accept the waiver of the fee and the refreshments and meal included in the program. A copy of the Department head's approval must be forwarded to the Commission.

The [Division of Motor Vehicles] Motor Vehicle Commission (MVC) is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several [Division] MVC employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the demonstration, but because the company plans to submit a bid to provide this equipment and is therefore an interested party with respect to the [Division] MVC, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

Three employees from different units of the Department of Transportation are responsible for weekly monitoring of a

construction project. Each Friday morning, they meet with the contractor's representative at the site field office to review the week's progress and to assess projected schedules. The meetings generally last one to two hours; coffee is available, but no other refreshments or meals are served or offered. Because no direct or indirect benefits are offered or provided and because the meetings are part of the employees' job responsibilities, the meetings are not "events" for the purposes of this subchapter.

19:61-6.5 Attendance at an event sponsored by an entity other than an interested party

(a) (No change.)

(b) The State may pay the reasonable expenses of the State official associated with attending the event or may permit the State official to accept direct or indirect benefits. Direct or indirect benefits may include the following:

1. (No change.)

2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500.00 per trip limitation shall not apply if the reimbursement or payment is made by:

i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State; [or]

ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or

iii. Any agency of the Federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(c) – (e) (No change.)

Examples

An employee of [Travel and Tourism at the Department of Commerce] the Commerce, Economic Growth and Tourism Commission has been invited, by the Mexican Tourist Bureau, an agency of the Mexican government, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at dinner on the final day of the meetings and has been offered a \$500.00 honorarium. The employee may attend the meetings but is not permitted to accept an honorarium in connection with his speech. He may accept, directly or by reimbursement, actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State, not to exceed the statutory limit of \$500.00.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant at the Department of Insurance who has been a long-time supporter of the organization. The organization plans to use the Technical Assistant's picture, name and official title

on the promotional literature. The Technical Assistant may attend the event but is prohibited from allowing such use of his official title for fundraising purposes.

19:61-6.7 Compensation for published work(s)

(a) (No change.)

(b) A State official shall secure the permission of the department head to accept compensation for published work(s) not created as part of his or her official duties. In determining whether such approval can be granted, the Department head shall consider the provisions of the Conflicts of Interest Law, the uniform ethics code, the [departmental] agency code of ethics, any applicable Executive Orders, the Commission's Guidelines for Secondary Employment, any other applicable guidelines or rules of the Commission, any applicable [departmental] administrative policies of the agency, and the following conditions:

1. - 2. (No change.)

(c) (No change.)

(d) The State official shall not use his or her official title in any way in soliciting compensation [and shall indicate that his or her views do not represent those of the State].

Examples (No change.)

19:61-6.8 [Sample approval] Approval request form

(a) [The] State officials shall use the following form [, or one containing substantially similar elements, may be used] to request approval to attend events [and/or accept compensation for published works].

REQUEST FOR APPROVAL FOR ATTENDANCE AT EVENT

DEPARTMENT OF _____

Name _____ Division _____

Title _____ Telephone _____ FAX _____

E-mail address _____

Event _____

Sponsor _____

Is the sponsor an "interested party"? Yes ____ No ____

Is the State official a speaker, panel participant or resource person? Yes ____ No ____

Is the sponsor an agency of the federal government, one or more other states or a political subdivision thereof? Yes ____ No ____

Is the sponsor a nonprofit organization? Yes ____ No ____

If [YES] Yes, is the employee or agency a member? Yes ____ No ____

Does the nonprofit organization have any contracts with the State? Yes ____ No ____

Location _____ Date(s) _____

Overnight accommodation required? Yes ____ No ____

Out-of-state travel required? Yes ____ No ____

Estimated cost? \$_____

Agency to pay cost? Yes ____ No ____

Sponsor to pay cost? Yes ____ No ____

Employee to pay cost? Yes ____ No ____

Reason for attendance: _____

Will sponsor offer an honorarium or fee? Yes ____ No ____

Employee Signature _____ Date _____

NOTE: Any substitutions or changes of circumstances must be reported.

Attendance approved Yes ____ No ____ Note: Acceptance of honoraria or fees is not permitted.

Conditions: _____

Signature

Date

19:61-6.10 Solicitation or acceptance of a thing of value from an entity other than an interested party

(a) (No change.)

(b) The Department head shall determine whether the thing of value was given or offered with the intent to influence or reward the performance of the State official's public duties and responsibilities, or whether it may be reasonably inferred to have been given or offered with the intent to influence the performance of his or her public duties and responsibilities, or whether the use of the item will create an impression of a conflict of interest or violation of the public trust. [The Department head shall also determine whether the thing of value is offered by a lobbyist or governmental affairs agent, as defined in N.J.S.A. 52:13C-18, and whether its acceptance by a State official will exceed the calendar year limit of \$250.00 established by N.J.S.A. 52:13D-24.1.]

(c) (No change.)

(d) Upon a determination that a State official may accept a thing of value from an entity other than an interested party, the Department head shall so notify the State official. [Such notification shall include an indication of whether the State official, in accepting the thing of value, has exceeded or will exceed the \$250.00 calendar year limit with respect to a lobbyist or governmental affairs agent.]

(e)- (f) (No change.)

SUBCHAPTER 7. RECUSAL PROCESS

19:61-7.2 Scope

The rules in this subchapter apply to all State officers and employees and to all special State officers and employees as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e), which definitions are incorporated in N.J.A.C. 19:61-[7.3] 1.10.

19:61-7.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

["Person" means any natural person, association, organization, firm, partnership or corporation (N.J.S.A. 52:13D-13(f)).]

["State agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State (N.J.S.A. 52:13D-13(a)).]

"State official" means any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e).]

19:61-7.4 Situations where recusal is required

(a) (No change.)

(b) For purposes of (a) 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.

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

(d) A State official must seek the advice of the State agency's counsel, agency ethics liaison officer or the [Executive] Commission [on Ethical Standards] as to the propriety of participation in a matter if any person requests that a State official recuse himself or herself from that matter. Oral advice, followed up by a writing, may be provided by the agency's counsel, the agency ethics liaison officer or the [Executive] Commission [on Ethical Standards] to avoid delay. Oral advice should subsequently be memorialized by a writing or by inclusion in public minutes.

[EXAMPLES] Examples

The spouse of the Director of the Division of Solid and Hazardous Waste (["Division"]), Department of Environmental Protection, recently became a partner in ABC, an environmental consulting firm that represents clients before the Division. The Director must recuse himself from any involvement with ABC matters that come before the Division. The recusal must be memorialized in writing and conform to the standards of N.J.A.C. 19:61-7.5(b).

The Director of a program that regulates health insurance carriers has been approached about possible employment by a regulated entity. The entity does not currently have any specific cause, proceeding, application or other matter pending. The solicitation must

immediately be disclosed to the Director's supervisor and the Department Ethics Liaison Officer to avoid a situation where the State official may appear to be using his/her official position to gain an unwarranted advantage. The circumstances surrounding the solicitation and the State official's official interactions with the entity must be reviewed before the official proceeds with any job-seeking activities. If it is determined that the State official may respond to the solicitation, he must recuse himself from any involvement with the entity in his official capacity. Such recusal must conform to the standards of N.J.A.C. 19:61-7.5(b).

Pursuant to N.J.A.C. 19:61-3.1(e), if a member of the [Executive] Commission [on Ethical Standards ("ECES")] holds office or employment in the same Department which employs a State official named in an allegation, he or she must disqualify himself or herself from participation in any decisional process relating to that particular case. One of the [ECES] Commission meeting agenda items is an allegation that a Department of Personnel employee has violated the Conflicts of Interest Law. Because the [ECES] Commission Chairwoman is the Commissioner of the Department of Personnel, materials associated with this matter would not be forwarded to her. In addition, the Chairwoman would place her recusal and the reason for such recusal on the record at the meeting and leave the room during non-public deliberations.

A member of the Real Estate Commission (["REC"]) is a Director and past President of the New Jersey Association of Realtors (["NJAR"]). The NJAR currently opposes a regulation proposed by the REC, has submitted a letter outlining its position, and plans to attend the REC meeting to express its opposition to the regulation. Because the REC member is an officer of the NJAR, he must recuse himself from discussions and voting on the regulation in question.

Standards]. The recusal must be absolute, that is, the State official must have no involvement with the matter from which he or she has recused himself or herself.

(b) - (c) (No change.)

APPENDIX

Sample Recusal Statements

Sample Recusal Statement: Seeking Employment

DATE: _____

TO: Agency Ethics Liaison Officer

[Executive] State Ethics Commission [on

Ethical Standards]

FROM: Name of Employee

SUBJECT: Recusal – Seeking Employment with

(Name of Outside Organization)

This is to notify you that I am (seriously considering employment with, discussing employment with, or seeking employment with) (Name of Outside Organization).

My seeking employment may present an actual or appearance of a conflict of interest; therefore, I must disqualify/recuse myself from any official duties that involve the above organization. I understand that I may not participate in any way as a State official in any matters regarding the above organization. Furthermore, I understand that it would be appropriate for any matters specifically involving the above-named organization to be referred to my supervisor (or subordinate, if no other option) without consulting me or informing me that such matters are pending. This action is taken with the concurrence of my [Division Director] supervisor (or subordinate), as indicated below.

I understand that this recusal will remain in effect until I inform you in writing that all employment seeking activity has terminated and I receive written permission from the agency ethics liaison officer to resume interactions with the outside organization.

19:61-7.5 Procedure for recusal

(a) If a State official finds, or is advised by agency counsel or the agency ethics liaison officer, that an incompatible financial or personal interest exists on a matter, the State official must recuse himself or herself from that matter or seek advice from the [Executive] Commission [on Ethical

Employee's Name

Recommend:

(Name of Employee's

Director/Supervisor) Date

Approve:

Ethics

Liaison Officer Date

Sample Recusal Statement Conflicts

DATE: _____

TO: Designee(s)

FROM: Name of Employee

SUBJECT: Recusal

Because I may be seen to have a conflict of interest in matters affecting [(names of individuals/companies)] (name of entity or individual relating to (family relationship, former affiliation with firm, etc.)), I am delegating all responsibility and authority for handling any such matters to you. Please ensure that I am screened from any information or communications on any such matters.

By copy of this memorandum, I am instructing [(names of colleagues/subordinates)] (appropriate contacts in office) to ensure that I do not receive any communications on any matters affecting [(names of individuals/companies)] (name of entity or individual). This recusal will remain in effect until (state duration of recusal).

dls

c: subordinates responsible for screening communications
Ethics Liaison Officer

[Executive] State Ethics Commission [on Ethical Standards]

TRAINING UPDATE

Ethics training is coming soon to a department near you! Ethics training is now mandatory for State Employees. In 2005, employees of 48 authorities and seven departments received ethics training. Ethics training in 2006 will be concentrated in the principal departments. Ethics Liaison Officers are encouraged to contact the Commission's training officer to schedule training for their employees and to discuss training plans for the larger departments and agencies. We also encourage you to consider ethics training as a component of other regularly or previously scheduled employee training. Subject to availability, the Commission's Ethics Training Officer will be available to provide ethics training as a part of employee development

workshops, staff meetings, seminars or new employee orientation programs. Please contact us with your suggestions for providing ethics training to your employees. We are committed to helping you deliver ethics training to your departments in the most efficient, effective way possible. The following is a list of authorities, departments and agencies whose employees have received ethics training from the State Ethics Commission:

Ethics Training Completed – 2005

Agriculture Development Committee
Authority Board Members
Brain Injury Research Commission
Building Authority
Camden Economic Recovery Board
Cancer Research Commission
Capital City Redevelopment Corporation
Casino Control Commission
Casino Reinvestment Development Authority
Child Advocate (Office of)
Commerce and Economic Growth Commission
Council on Affordable Housing
County Soil Conservation Districts
Cultural Trust
Development Authority for Small Businesses, Minorities & Women's Enterprises
Developmental Disabilities Council
Educational Facilities Authority
Economic Development Authority
Election Law Enforcement Commission
Environmental Infrastructure Trust
Garden State Preservation Trust
Governor's Council on Alcoholism and Drug Abuse
Health Care Facilities Financing Authority
Higher Education Student Assistance Authority
Higher Education (Commission on)
Highlands Water Protection & Planning Council
Historic Trust
Housing and Mortgage Financing Agency
Inspector General (Office of)
Lottery Commission
Maritime Pilot and Docking Commission
Meadowlands Commission
Motor Vehicle Commission
New Jersey Transit
North Jersey District Water Supply
Passaic Valley Sewerage Commission
Pinelands Commission
Public Broadcasting Authority
Ratepayer Advocate
Redevelopment Authority
Schools Construction Corporation
Science and Technology (Commission on)
South Jersey Port Corporation
South Jersey Transportation Authority
South Jersey Transportation Planning Organization
Spinal Cord Research Commission
Sports and Exposition Authority
State Ethics Commission
State Soil Conservation Commission

Turnpike Authority
Urban Enterprise Zone
Victims of Crime Compensation Board

Ethics Training Completed – 2006

Agriculture
Arts Council
Banking and Insurance
Corrections – Senior Staff, Financial Disclosure Filers & Trainers
Education
Education –County Superintendents, Business Administrators & Child Study
Team Supervisors
Ethics Commission - Special State Officers
Governor's Office
Health Care Facilities Financing Authority
Historical Commission
Individual Health Coverage Program
Information Technology (OIT)
Labor -Senior Staff and Financial Disclosure Filers
Marie Katzenbach School for the Deaf
Office of Administrative Law
Parole Board - Board Members and Senior Staff
Personnel
Public Defender -Regional Office Managers
Small Employer Health Benefits Program
State
State Library
State Museum
Thomas Edison State College – Board of Trustees and Senior Cabinet
University of Medicine and Dentistry of New Jersey
Workers' Compensation - Department of Labor

COMPLIANCE UPDATE

Pursuant to recent changes in the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-21(e)(3), the N.J. State Ethics Commission, in May 2006, began conducting ethics compliance reviews (audits) of all Executive branch agencies. The primary purpose of the Commission's compliance reviews is to ensure that State agencies are meeting the reporting, training and other legal requirements of the State's ethics laws. The compliance review process is also designed to determine whether State agencies have in place procedures and practices that will prevent and detect ethics violations.

Prior to conducting an on-site agency compliance review, the Ethics Commission's Compliance Officer will provide the agency's Ethics Liaison Officer with a Checklist which will be used for the review. The Compliance Review Document Checklist itself can serve as a valuable tool for future agency ethics program activities.

It should be kept in mind that the Ethics Commission also views the compliance review process as an opportunity for agency Ethics Liaison Officers to obtain support and assistance on any ethics issues/problems they are

experiencing. The Commission's Compliance Officer is available, during and after the review, to discuss with the Ethics Liaison Officer ways to improve his/her agency's ethics program.

The following is a list of agencies that have, to date, had an Ethics Commission compliance review:

1. Office of Administrative Law
2. Department of State
3. Department of Banking and insurance
4. Department of Community Affairs
5. Office of the Public Defender

Questions regarding the Commission's Compliance Review Process can be directed to Jeffrey Stoolman, Esq., Compliance Officer, at 609-826-5542.

Commission Case No. 28-04

SUBJECT: Outside Employment

FACTS: The State employee appealed the determination of the Department's Ethics Liaison Officer that her secondary employment as an Executive Recruiter created a conflict with her State employment.

RULING: The Commission concurred with the Department ELO that the employee's proposed secondary employment constituted a significant overlap with her official duties and was not approvable.

REASONING: In the course of her official duties, the employee works with limited-access databases that provide information about individuals seeking specific kinds of employment as well as employers who have job openings.

The Commission concurred with the management in the employee's chain of command that the appearance of conflict and the potential for actual conflict were too significant to approve this outside employment. Their specific concern was that the employee could access the Department's databases, even from her home, with her State passwords and that her access of the system is untrackable.

Commission Case No. 30-04

SUBJECT: Unwarranted Advantage

FACTS: The Commission reviewed an allegation that a State employee used her official position to attempt to place her nephew in the Pilot Program of a course developed by an agency for which she had oversight responsibilities.

RULING: The Commission determined that there were indications that the State employee violated sections 23(e) (3) and (7) of the Conflicts Law and authorized the drafting of a complaint. The State employee entered into a consent order with the Commission and agreed to a civil penalty of

\$750.

REASONING: The Commission has addressed various family member issues over the years, primarily under the application of sections 23(e)(3), unwarranted privilege, 23(e)(4), direct or indirect personal financial interest that might reasonably be expected to impair objectivity and independence of judgment, and 23(e)(7), the appearance of impropriety. In all of the cases, the Commission has found that State employees cannot use their official positions to benefit or appear to benefit family members.

The Commission's recusal rule, *N.J.A.C.* 19:61-7.1 et seq., requires State employees to recuse "on any matter pertaining to a relative...." *N.J.A.C.* 19:61-7.4. The definition of relative in the rule includes nephew. *N.J.A.C.* 19:61-7.3.

Commission Case No. 32-04

SUBJECT: Use of Official Stationery

FACTS: The Commission received an allegation that the State employee sent a letter, on his agency's official letterhead, to the mayor of his community asserting that he was not satisfied with street repairs near his property.

RULING: The Commission, pursuant to *N.J.A.C.* 19:61-3.1(h), determined that there were indications that the State employee violated sections 23(e)(3), use of official position to gain an unwarranted advantage, and 23(e)(7) of the Conflicts Law, appearance of impropriety, when he used the services of his secretary to type a personal letter on official stationery and directed staff and counsel to draft a complaint.

REASONING: In 1991, the Commission approved Guidelines Governing the Use of Official Stationery and clearly took the position that official stationery cannot be used for personal purposes by State officers and employees.

Commission Case No. 02-05

SUBJECT: Business Relationship with Agency Employee

FACTS: The Deputy Division Director asked the Commission for an exception to the prohibition in the Commission's rules at *N.J.A.C.* 19:61-2.2(d). This section requires that each agency code of ethics include a provision expressly prohibiting the agency head and deputy and assistant heads from having any personal contractual or business relationship with another officer or employee or special State officer or employee of the agency. The Commission required such a provision in each agency code of ethics after considering Case No. 17-03, in which the agency head had entered into a business arrangement with an employee in his Department to work on a research project for his son. A dispute arose as to the parameters of the work and the fee, and the employee filed a complaint with the Commission.

The Deputy Division Director is a general partner with a tax preparation service; one of the other partners is an employee of his division. The Deputy Division Director asked to be exempted from the Commission's prohibition so that he could continue his business relationship with the division employee. At the time of this request, the Division was divided into six units, all reporting through him. The other partner was assigned to the Operations Unit.

Prior to the Commission considering this matter, the Chief Financial Officer of the Department moved the reporting relationship of the Operations Unit from the Division's Deputy Director to himself. He explained that this move was more consistent with a best practices model that stresses separation of duties in financial transactions. Thus, there was no longer a reporting relationship between the two business partners.

This request raised several questions:

Does the Commission intend *N.J.A.C.* 19:61-2.2(d) to apply at the division level?

Does the Commission intend to allow exemptions from the rule?

Does the rule apply within a working unit when there is no chain-of-command relationship?

RULING: The Commission determined that:

N.J.A.C. 19:61-2.2(d) applies to any identifiable work unit, e.g., Department, Authority, Commission, Division, Bureau, Office, etc.

There are no foreseeable circumstances that would justify an exemption from the rule.

The rule does not apply if there is no chain-of-command relationship between an agency head or assistant or deputy head and an employee of the agency. Thus, the rule does not apply to the situation under review. The Deputy Director is advised to inform the Commission immediately if his situation changes.

REASONING:

1. The rule specifies "agency" in its language, a term generally accepted as meaning a major unit, such as a department, rather than a component of a major unit. The Commission determined that it would create an absurd result to allow a Division Director or Deputy Director to have a personal contractual or business relationship with an employee of a Division when a Department head cannot have such a relationship with anyone in the Department, including employees of all the Divisions. Thus, it appears that the rule should be applied to any identifiable work unit.

2. The Commission determined that there does not appear to be any reason to allow exemptions from the rule.

3. The Commission established the rule in question because the employee in question clearly had the ability to affect the employment circumstances of the individual he hired to help with his son's research. Where there is no chain-of-command relationship, it is harder for a management level employee to affect the employment circumstances of another employee in the work unit, but it is not impossible. On the other hand, when there is no chain-of-command relationship, arguably, there is no conflict issue.

Commission Case No. 35-05

SUBJECT: Unwarranted Advantage

FACTS: The staff received an allegation that the agency Director's involvement with an agency vendor is violative of the Conflicts Law and/or the agency Code of Ethics. According to the complainant, the Director is a former employee of the vendor and continues to actively participate in decisions regarding the vendor, conducts business with the vendor while representing the agency's interests and attends a number of functions at the vendor's facility. The complainant also asserts that the Director may have profited from this relationship.

RULING: The Commission, pursuant to *N.J.A.C. 19:61-3.1(g)*, dismissed the allegation. However, the Commission advised the agency that all potential employment situations that involve interested parties must be reviewed by the Ethics Liaison Officer.

REASONING: There is no per se requirement that State officials recuse themselves from matters involving a former employer. The Commission has required recusal when a State official has a continuing financial relationship with the former employer (annuity, buyout agreement, stock ownership), when an immediate family member has employment or a financial relationship with the former employer, or when there is an overlap of specific matters that the official dealt with in his/her previous employment and would be in a position to deal with in his/her State position.

The Director does not have a continuing financial relationship with the vendor, or any other type of interest, financial or otherwise, in the business nor is any member of his immediate family employed by the company. However, there is an overlap of specific matters in that the Director had responsibility for the contract in question while employed by the vendor and is currently responsible for that contract in his official capacity. Such overlap is not permitted under Advisory Opinion No. 7. However, the Director's hiring by the agency was never reviewed by the Ethics Liaison Officer and no one at the agency raised any concerns regarding the Director's potential employment.

Despite the fact that the Director's oversight of the contract is not approvable under Advisory Opinion No. 7, the staff's review of this situation did not substantiate the allegations.

All of the Director's contacts with the vendor appear to be in his official, not private, capacity and there is no indication that he has profited in any way from his existing relationship with his former employer.

Regarding "Guidelines"

Please direct any comments or questions about "Guidelines" to

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