



GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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EXECUTIVE COMMISSION ON ETHICAL STANDARDS

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COMMISSION CASE NO. 30-02

SUBJECT: Blind Trust.

FACTS: The State employee requested the Commission's approval to place shares of stock of an entity regulated by his Department into a blind trust. Blind trusts are sometimes used by public officials to cure a conflict of interest. The purpose of a trust is to remove control and knowledge of the trust asset from the grantor of the trust. For those situations where a blind trust is appropriate, the Commission must approve the trust, and the trust document must contain characteristics specified in Section II of Executive Order No. 10 (McGreevey, 2002).

RULING: The Commission advised the State employee that under the application of the Department's code of ethics, he was not permitted to hold any interest in a regulated entity while employed at the Department and a blind trust was not available to him. The State employee was advised that he must divest his interest within ten working days.

REASONING: In reviewing a blind trust, the Commission must make two determinations. First, whether a blind trust is suitable given the nature of the asset and the circumstances of the holder of the asset and second, whether the blind trust conforms with the requirements of the Order.

In assessing the suitability of the proposed blind trust, the Commission took into account the Department's code of ethics. The employee was prohibited by the code from owning the shares of stock. The code states that the prohibition does not apply to investments in mutual funds, deferred compensation, etc., in which the employee does not make or influence the selection of individual investments. The Commission concluded that a blind trust was not a suitable solution for the State employee in this situation because the employee made the selection of the individual investment.

Because the employee was not permitted to own the stock, the proposed blind trust was not approvable; the Commission did not find it necessary to review the trust document against the requirements of the Order.

COMMISSION CASE NO. 37-02

SUBJECT: Contracting with the State.

FACTS: One of the Department's Divisions contracted

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.

with seven Department employees to conduct surveys. The issue of whether such contracts are permitted arose in the course of processing the paperwork to compensate the seven employees. The Commission was asked to review the matter to determine whether the contracts were permitted and whether the seven employees could be compensated for the already completed work.

The Division advised that funding for the survey was not made available until shortly before the work was to commence, leaving the Division with a brief period in which to recruit approximately 66 qualified individuals. The Division could not delay because there was only a three-week window in which to conduct the survey. The Division recruited Department employees because there was a limited supply of qualified persons available.

RULING: The Commission determined that Department employees are prohibited from contracting with the Division to conduct the surveys. In addition, the Commission declined to approve payment to the employees because the contracts underlying the invoices were not approved and not approvable under the Conflicts Law.

REASONING: Section 19 prohibits a State officer or employee from entering into a contract, valued at \$25 or more, with any State agency. This prohibition also extends to partners or any corporation which the State officer or employee controls or in which he owns or controls more than 1% of the stock. Section 19(b) exempts only three categories of contracts from this general prohibition.

The Commission determined that these personal service contracts were prohibited under section 19 and did not fall within any of the exceptions of section 19(b). The Commission did not consider the Division's solicitation of the Department employees to be a mitigating factor based on its precedent in this area. As to the payment for the services already rendered, such payments are precluded under Commission precedent.

COMMISSION CASE NO. 39-02

SUBJECT: Post-Employment.

FACTS: The Commission received an allegation that the post-employment activities of a former employee were violative of section 17 of the Conflicts Law. During his tenure at the agency, the former employee was a Project Officer for one of the agency's programs. Under the program in question, the agency is responsible for financing, designing, and constructing specific projects. The former State employee was designated as a subcontractor in a proposal submitted in response to an RFP issued by his former agency.

RULING: The Commission determined that the former State employee was permitted, under the post-employment restriction, to provide services in connection with the project in question.

REASONING: The Commission uses a two-pronged

analysis in section 17 cases: (1) Is the former State employee representing, appearing for, negotiating on behalf of, or providing information not generally available to members of the public to a party other than the State, and (2) Was the former State employee substantially and directly involved in the "matter" in question?

In this situation, the first prong was satisfied in that the former State employee would be representing a party other than the State in his role as a consultant. Based on discussions with the agency staff, it did not appear that the former State employee would be providing information not generally available to the public.

As to the second prong, the Commission historically has defined "matter" in a manner that has not prohibited a former State employee from utilizing his/her general expertise in connection with post-employment activity. Under the Commission's precedent, each individual project undertaken by the agency would be a new "matter" for the purposes of section 17. Thus, the former State employee would be permitted to represent a party other than the State so long as he had no involvement with the specific project in question during his State employment.

RECUSAL PROCESS. The staff receives numerous inquiries about when recusal is required and the appropriate method for implementing recusal. The Commission's recusal rule is set forth below. The rule contains examples of recusal situations. Following the text of the rules, a number of scenarios are provided so that you can test your understanding of when recusal is required. Sample recusal forms are available on the Commission's website.

19:61-7.1 Purpose

The purpose of this subchapter is to provide State officials with guidance regarding the circumstances under which a State official must recuse himself or herself and procedures as to properly effectuating a recusal.

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.

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)).

"Recusal" means the process by which a person is disqualified, or disqualifies himself or herself, from a matter because of a conflict of interest.

"Relative" means a spouse, parent, child, sibling, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, or first cousin, whether in

whole or half blood, by marriage, adoption or natural relationship, and the spouse of any such person.

“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) A State official must recuse himself or herself from a matter if he or she has:

1. Any financial interest, direct or indirect, that is incompatible with the discharge of the State official’s public duties; or

2. Any personal interest, direct or indirect, that is incompatible with the discharge of the State official’s public duties.

(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 a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to 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/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

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 meeting agenda items is an allegation that a Department of Personnel employee has violated the Conflicts of Interest Law. Because the ECES 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.

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 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) All recusals, other than those provided for in

(c) below, must be memorialized in writing. See the subchapter Appendix for samples. The writing must:

1. Specify the reason for and the date of the recusal;
2. Specify the duration of the recusal (which may be expressed in terms related to the pendency of the matter in the State agency);
3. Specify the effect of the recusal on the State official and his or her State agency (for example, that the State official is not to be contacted or involved or participate in any manner concerning the matter from which he or she has been recused);
4. Name the person who is to assume responsibility and authority for the matter from which the State official has been recused (if applicable); and
5. Be disseminated to all persons who might be affected by the State official's recusal and to the agency ethics liaison officer, who shall maintain the writing for as long as the State official serves in his or her position.

(c) In the case of a State agency that maintains a public record of a proceeding, that is, a Board or Commission meeting, formal written recusal is not required; however, the following procedures must be followed:

1. To the extent feasible, meeting materials involving a matter from which the State official must recuse himself or herself should not be distributed to the State official;
2. At the subject meeting, the State official must place his or her recusal and the reason for such recusal on the record prior to any discussion of the matter; and
3. The State official must leave the room at a non-public portion of the meeting while the matter in question is under discussion.

Test Your Knowledge of the Recusal Rule. Now that you have had an opportunity to review the recusal rule, see if you can answer the following questions correctly.

Scenario 1

Stephanie is an engineer at the Department of Transportation ("DOT"). She also is employed, part-time, at Computer Innovations ("CI") in the company's Programming Division. Stephanie's outside employment has been approved by the DOT Ethics Liaison Officer. CI is not a vendor to the DOT. CI's Consulting Services Division has responded to an RFP issued by the Department of the Treasury ("Treasury"). Stephanie has been asked by Treasury to sit on the Selection Committee for this RFP. Stephanie is flattered to have been asked to sit on the Committee and feels that she can be objective in fulfilling her role. Both CI Divisions are housed in the same office complex. What advice would you provide to Stephanie?

- A. Stephanie may sit on the Selection Committee because the RFP was submitted by CI's Consulting Services Division and Stephanie has no involvement, in her outside employment, with that Division.
- B. Stephanie may sit on the Selection Committee because CI is not a vendor to the DOT.

C. Stephanie may sit on the Selection Committee because she has fully disclosed her outside affiliation with CI and her outside employment has been approved by the Department Ethics Liaison Officer.

D. Stephanie may not sit on the Selection Committee because she holds outside employment with CI.

Answers

A. is incorrect. CI is Stephanie's employer. It is not relevant that Stephanie works for a different Division of the same company.

B. is incorrect. The fact that CI is not a vendor to the DOT is not relevant. Stephanie would be acting in her official capacity as a member of Treasury's Selection Committee.

C. is incorrect. The fact that Stephanie has approval for her outside employment does not give her permission to act in her official capacity in connection with CI.

D. is correct. Because CI is Stephanie's employer, she can be seen as having a financial interest that is incompatible with the discharge of her official duties.

Scenario 2

Susan is an Auditor at the New Jersey Meadowlands Commission ("NJMC"). Her husband has recently been hired by a firm that is the primary contractor on a project that Susan has overseen for the past five years. She regularly interacts with employees of the firm and attends monthly status meetings at the firm's headquarters. Her husband will have no assignment in connection with the project that Susan oversees. She has asked whether she may continue to oversee the project or whether she must recuse herself from involvement with the firm in light of her husband's recent hiring.

A. Because Susan has overseen the project for five years and possesses a great deal of expertise in regard to the project, she is permitted to continue overseeing the project.

B. Susan must recuse herself from any involvement with the project because the primary contractor now employs her husband.

C. Susan may continue to oversee the project because, while her husband is employed by the primary contractor, he has no involvement with the project.

D. Susan may continue to oversee the project because it would be a burden on the NJMC to replace her.

Answers

A. is incorrect. Susan's level of expertise is not a factor to be considered in determining whether her recusal is required.

B. is correct. Under the Commission's precedent, Susan is required to recuse herself from any involvement with the project due to her husband's employment by the primary contractor.

C. is incorrect. Under the Commission's precedent, Susan is required to recuse herself from any involvement with the project due to her husband's employment by the primary contractor.

D. is incorrect. The burden on the agency is not a factor to be considered in determining whether her recusal is required.

Scenario 3

David is an Assistant Commissioner at the Department of Corrections ("DOC") and is a member of the DOC's Prison Improvement Task Force. David has authored a book entitled "An Overview of the U.S. Prison System." In his private capacity, David is President of the New Jersey Association of Corrections Professionals ("NJACP"); he receives no compensation in connection with this role. The NJACP has taken a position on a controversial prison proposal which is scheduled to be considered by the Task Force at its next monthly meeting. David has a great deal of expertise in the area in question and would like to be involved in the Task Force's discussions and voting on the prison proposal. He acknowledges that he has strong views on the subject. What advice would you provide to David?

A. David is permitted to participate in discussions and voting on the issue because he possesses substantial expertise in the area in question.

B. David is prohibited from participating in discussions and voting on the issue because he has a leadership role in the NJACP, which has already taken a public position on the issue.

C. David is permitted to participate in discussions and voting on the issue because he receives no compensation as NJACP President.

D. David is prohibited from participating in discussions and voting on the issue because he has authored a book on prison systems.

Answers

A. is incorrect. The fact that David possesses expertise in the area is not a factor to be considered in determining whether a conflict exists.

B. is correct. Because David is President of the NJACP and that organization has already taken a public position on the prison proposal, he must recuse himself from the Task Force's discussions and voting on this issue.

C. is incorrect. The fact that David's position with the

NJACP is uncompensated is not relevant. The organization has taken a public position on the issue; thus, David's objectivity and independence of judgment can be viewed as being compromised.

D. is incorrect. David's authoring of a book on prison systems does not automatically preclude him from discussions and voting on the issue.

Scenario 4

Andrew is a member of the New Jersey Housing and Mortgage Financing Board ("Board"). At the Board's monthly public meeting, Andrew discovers that one of the applicants appearing before the Board is represented by Andrew's next door neighbor, Paul. Andrew and Paul have been neighbors for approximately 15 years and have not spoken for the past 5 years because of a dispute over Paul's dog, Lucky. Paul leaves Lucky out in the yard late at night, and Lucky barks incessantly. Andrew has called the police on a number of occasions, and Andrew and Paul have had several shouting matches about the problem. Andrew is thrilled that he finally will get a chance to "get even" with Paul. What advice would you provide to Andrew regarding his participation in the matter concerning Paul's client?

A. Andrew must recuse himself from discussions and voting on the matter; however, he may remain in the room during the non-public portion of the meeting.

B. Andrew must recuse himself from discussions and voting on the matter. Written recusal is required.

C. Andrew need not recuse himself because no one else on the Board is aware of Andrew's relationship with Paul.

D. Andrew must recuse himself. The reason for recusal must be placed on the record. He should leave the room during the non-public portion of the meeting. However, formal written recusal is not required because the Board maintains a public record of the proceedings.

Answers

A. is incorrect. While Andrew must recuse himself, he cannot remain in the room during the non-public portion of the meeting.

B. is incorrect. While Andrew must recuse himself, written recusal is not required because the Board maintains a public record of the proceedings.

C. is incorrect. Andrew must recuse himself. It is not relevant that no other Board member is aware of Andrew's relationship with Paul.

D. is the correct answer under the Commission's Recusal Rules.

FINANCIAL DISCLOSURE STATEMENTS

The deadline for filing Financial Disclosure Statements ("FDS") is Thursday, May 15, 2003. Filers should have already received FDS forms and instructions in the mail. In the event that you have not received your FDS or have misplaced it, instructions and forms are available on the Commission's website. The forms are available either as a PDF or an Omniform executable file.

PDF formatted documents contain the same text as the original printed documents. To view them, you must have a PDF viewer, available free from Adobe.

The Omniform version can be electronically filled, printed, and saved. These files are saved in a compressed ZIP file format and must be unzipped using a third party compression software (example: WinZip) before executing them. These forms are not to be submitted electronically. They provide an easy-to-fill form for those who will be filing in future years. After the form is filled and saved, it must be printed and returned with an original signature and an original notarization.

EMPLOYMENT OPPORTUNITY. Here is an opportunity to join the congenial, knowledgeable Commission staff.

Title: Investigator

Salary: Competitive Salary Commensurate with Experience (\$32,000 - \$38,000)

Description of Job: As assigned, investigates allegations of violations of the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., on the part of State officers and employees and special State officers and employees, completes documentation, and/or prepares reports concerning investigations; performs other related duties as required.

Examples of Work:

- * Conducts interviews and reviews documents pertinent to investigations.
- * Analyzes, interprets and evaluates information obtained.
- * Prepares clear, concise, accurate and informative reports of all investigative work.
- * Abstracts statutes, rules, regulations and other legal data and compiles materials needed for the completion of investigations as well as for presentation of cases by the Deputy Director and Executive Director for Commission meetings.
- * Reviews financial disclosure statements for completeness and for potential or existing conflicts of interest.
- * Cooperates with other law enforcement agencies in related investigations.
- * Testifies at administrative hearings.

REQUIREMENTS

Education: Bachelor's degree from an accredited college or university.

Experience: One (1) year of experience in work involving collecting facts and obtaining information by examining records and interviewing individuals. Applicants who do not possess the required education may substitute additional experience on a year-for-year basis.

Resumes should be forwarded to:

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Regarding "Guidelines"

Please direct any comments or questions about "Guidelines" to

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