

SUBTITLE L

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

CHAPTER 61

EXECUTIVE COMMISSION ON
ETHICAL STANDARDS

Authority

N.J.S.A. 52:13D-21.

Source and Effective Date

R.2001 d.395, effective September 27, 2001.
See: 33 N.J.R. 2259(a), 33 N.J.R. 3757(b).

Chapter Expiration Date

Chapter 61, Executive Commission on Ethical Standards, expires on September 27, 2006.

Chapter Historical Note

Chapter 61, Executive Commission on Ethical Standards, was adopted as R.1972 d.32, effective February 18, 1972, and codified as N.J.A.C. 1:1 through 1:5. See: 4 N.J.R. 55(a). An amendment regarding the filing of advisory opinions and disciplinary actions with the Division of Administrative Procedure was adopted as R.1972 d.57, effective March 15, 1972, and codified at N.J.A.C. 19:20-5.2, with all Commission rules to be codified at N.J.A.C. 19:20. See: 4 N.J.R. 79(d). N.J.A.C. 19:20 was recodified to N.J.A.C. 19:61 by an administrative change, effective January 3, 1984. See: 16 N.J.R. 56(c). Pursuant to Executive Order No. 66(1978), Chapter 61 expired on July 7, 1991.

Chapter 61, Executive Commission on Ethical Standards, was adopted as R.1992 d.97, effective March 2, 1992. See: 23 N.J.R. 3436(b), 24 N.J.R. 864(a).

Subchapter 6, Attendance at Events, Acceptance of Honoraria, and Acceptance of Compensation for Published Works, was adopted as R.1995 d.108, effective February 21, 1995. See: 26 N.J.R. 4757(a), 27 N.J.R. 763(a).

Pursuant to Executive Order No. 66(1978), Chapter 61, Executive Commission on Ethical Standards, was readopted as R.1997 d.88, effective January 24, 1997. See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

Chapter 61, Executive Commission on Ethical Standards, was readopted as R.2001 d.395, effective September 27, 2001. As part of the provisions of R.2001 d.395, Subchapter 7, Recusal Process, was adopted as new rules, effective November 5, 2001. See: Source and Effective Date.

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SUBCHAPTER 1. ORGANIZATION

19:61-1.1 Scope of rules

The rules in this chapter shall constitute the practices and procedures of the Executive Commission on Ethical Stan-

dards and shall govern all activities of the Commission pursuant to N.J.S.A. 52:13D-12 et seq.

19:61-1.2 Meetings and offices

The Commission shall meet at the call of its Chair upon not less than three days notice to members thereof. The Commission may maintain offices in such place or places as it may deem advisable.

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

19:61-1.3 Presiding member

The Chair shall preside, but in case of absence or inability to serve, the Vice Chair shall temporarily preside in his or her stead. In the absence of both, the senior member attending shall preside. Seniority of the members of the Commission shall be determined by the order of their respective appointments to the Commission.

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

19:61-1.4 Quorum

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.

19:61-1.5 Executive or open meetings

Meetings of the Commission, including open and executive sessions, shall be conducted in compliance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

19:61-1.6 Majority vote

No determination of the Commission shall be rendered unless supported by the vote of members constituting a majority of the quorum present. Minutes of Commission meetings may be approved by a majority of eligible members. A member is eligible to vote on minutes of meetings that he or she attended.

19:61-1.7 Conflict with agency rules

Any conflict between the rules established by the Commission and those developed by the various State agencies to implement their respective Codes of Ethics shall be resolved in favor of the rules established by the Commission.

19:61-1.8 Enlargement of time

A reasonable extension of time for the taking of any action for which these rules prescribe a time limitation may be granted by the Commission upon a clear showing of good cause and the absence of prejudice.

19:61-1.9 Administrative head

The Commission may appoint an Executive Director who shall serve as the administrative head of the Commission. In the absence of an administrative head, the Chair may designate an individual to serve as acting administrative head.

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

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 member of the Executive Commission on Ethical Standards designated by the Governor to serve as the Chair and Vice Chair thereof.

"Commission" shall mean the Executive Commission on Ethical Standards continued and established in the Department of Law and Public Safety by the provisions of N.J.S.A. 52:13D-12 et seq.

"Preliminary investigation" means the investigative process undertaken by the Commission and/or its staff and/or a departmental ethics liaison officer or departmental 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).

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

Added "Chair"; deleted "Chairman"; and amended "Commission" and "Preliminary investigation".

SUBCHAPTER 2. JURISDICTION

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 State officers and employees, and special State officers and employees of the Executive Branch of the government, 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) All determinations made by State agencies with regard to the Conflicts of Interest Law or a Code of Ethics shall be filed with the Commission. It shall be within the discretion of the Commission to review said determinations and affirm, reverse or modify same.

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

In (a), added text "and any other statutes... N.J.S.A. 5:12-58, 59, and 60".

19:61-2.2 Agency 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 proce-

dure 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).

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

(c) Each agency shall put into place a distribution procedure to ensure that each current officer and employee and each new officer and employee receives a copy of the agency Code of Ethics. Each officer or employee shall sign a receipt indicating the date on which the Code was received and an acknowledgment that the officer or employee is responsible for reading the Code and is bound by it. The receipt shall be maintained in the officer's or employee'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.

New Rule, R.1992 d.180, effective April 20, 1992.

See: 23 N.J.R. 3436(b), 24 N.J.R. 1517(b).

Amended by R.1994 d.584, effective November 21, 1994.

See: 26 N.J.R. 3141(a), 26 N.J.R. 4640(b).

19:61-2.3 Procedure where Commission is without jurisdiction

Whenever it shall appear that the Commission is without jurisdiction over a matter brought before it, it shall so notify the person bringing the matter. Where possible, the matter shall be forwarded to the proper agency for further action.

19:61-2.4 Access to documents

(a) Every financial disclosure statement accepted for filing by the Commission, pleadings related to a complaint, all final orders, decisions and opinions shall be maintained by the Commission as documents available to the public. Requests for advisory opinions from the Commission and replies to requests for advisory opinions may be made available to the public after consideration by the Commission.

(b) Any person shall, upon request, be afforded opportunity to examine a document, or a photocopy of any document so maintained at the Commission offices between 9:00 A.M. and 4:00 P.M. on business days.

Amended by R.1997 d.88, effective February 18, 1997.

See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

Requests for advisory opinions and the replies were formerly public records per se.

19:61-2.5 Copies of documents; fees

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

(b) Fees for photocopies shall be due and payable at such time as the photocopies have been prepared.

SUBCHAPTER 3. PROCEEDINGS

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 a code, rule, or regulation promulgated by a State agency, to that agency for disposition in accord with its procedures.

2. It shall be within the discretion of the Commission to transfer those allegations involving the alleged violation of another State statute to the appropriate enforcing authority.

3. Any preliminary investigation by a departmental ethics liaison officer or a departmental 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 involved, and any other individuals who possess knowledge of the circumstances surrounding the alleged conduct.

(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) involved.

2. No information regarding the allegation shall be made public until after the Commission action in accordance with (g) or (h) below. After the final determination of a matter before the Commission and the expiration of any time for appeal, the Commission shall consider requests for information related to the completed matter. The contents of the Commission's investigative file, however, are confidential and shall not be released except upon authorization of the Commission. The Commission shall consider and determine whether the requester has a particularized need for the contents of the file and has established an inability to obtain the requested information from other sources. In its consideration, the Commission shall balance the requester's need against the public interest to maintain the confidentiality of the files.

(d) After the conclusion of the preliminary investigation, the Commission shall notify the employee(s) involved and the head of the department employing said State officer(s) or employee(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 which employs the State officer or employee 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 of the employee(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.

(h) If the Commission determines that there are indications of a violation meriting further investigation, a complaint shall be set down promptly for hearing at the Office of Administrative Law pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, or the Commission may hold the hearing itself. If the Commission hears the matter, it shall follow the standards of the Administrative Procedure Act.

(i) After the hearing is concluded, a decision shall be issued in accordance with the time frame set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-10.

(j) If the Commission determines that the State officer or employee has violated 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 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 to suspend said officer or employee for a period not in excess of one year.

2. Should the Commission find that the conduct of said State officer or employee constitutes a willful and continuous disregard of 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 may order or direct the State agency employing the State officer or employee to remove the State officer or employee 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 not exceeding five years from the date on which he or she was found guilty by the Commission.

Amended by R.1997 d.88, effective February 18, 1997.

See: 28 N.J.R. 4755(b), 29 N.J.R.593(a).

In (c)2, amended subsection references and added text "After the final... confidentiality of the files."; (d) and former (e) combined into new (d); former (f) through (k) recodified as (e) through (j); in (f), substituted "after review" for "after consideration of the report"; in (g) and (h), deleted reference to a report of the preliminary investigation; and in (g), deleted reference to the dismissal and report being kept as public record.

19:61-3.2 Subpoena for witnesses

(a) If the Commission shall determine that the testimony of any person or persons is required, it may issue a subpoena in the name of the Commission requiring such person or persons to appear and testify before the Commission, Commission member, or Administrative staff member thereof, from day to day until the examination of such person or persons shall be completed. The Chair or, in his or her absence, the Vice Chair or, in the absence of both, the next-senior member, may make the determination, on behalf of the Commission, to issue a subpoena.

(b) The subpoena may also contain a direction that such person bring with him or her to the examination, any books, papers, or documents designated therein.

(c) If a person subpoenaed to attend any hearing refuses or fails to appear to be examined, or to answer any question or to produce any books, records, accounts, papers and documents when ordered to do so by the Commission, the Commission may apply to the Superior Court to compel the person to comply forthwith with the subpoena, directive or order of the Commission.

Amended by R.1989 d.521, effective October 2, 1989.

See: 21 N.J.R. 1507(b), 21 N.J.R. 3179(b).

In (a), added text regarding the authority to issue a subpoena.

Amended by R.1997 d.88, effective February 18, 1997.

See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

19:61-3.3 Allegation by member of Commission

Any member of the Commission may file an allegation with the Commission. Said allegation shall thereafter be treated in accordance with N.J.A.C. 19:61-3.1, except that the Commission member making the allegation shall thereafter be precluded from participating in any decisional processes having to do with that particular cause.

19:61-3.4 Allegation before State agency

An allegation of the violation by a State officer or employee of 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 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.

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).
Amended N.J.S.A. reference.

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 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 or any other disciplinary actions shall be effective when approved by this Commission.

19:61-3.6 Relaxation of rules

The rules set forth in this subchapter regarding the procedural requirements for the filing of complaints may be relaxed by the Commission in any instance where it shall be manifest to the Commission that a strict adherence to them will work surprise or injustice. In any matter not expressly controlled by these rules or by statute, the Chair shall exercise his or her discretion.

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

SUBCHAPTER 4. ADVISORY OPINIONS

19:61-4.1 Requests for advisory opinions

Requests for advisory opinions concerning whether a given set of facts and circumstances would in the Commission's opinion constitute possible violations of N.J.S.A. 52:13D-12 et seq., or any code, rules or regulations promulgated pursuant thereto, may be made by any person or persons. Advisory opinions rendered pursuant to this section are only binding as to the facts and circumstances reviewed and considered in the specific request. The Executive Director or designee shall have discretion to determine a format appropriate to the circumstances of each request.

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).
Substantially amended section.

SUBCHAPTER 5. GENERAL PROVISIONS

19:61-5.1 Investigations and hearings

The Commission shall have the power to undertake investigations and hold hearings into matters having relevance to the provisions of N.J.S.A. 52:13D-12 et seq., whether or not an allegation has been filed or request for advisory opinion made, and to this end, the full investigative authority and subpoena power of the Commission shall obtain and be available as required.

19:61-5.2 Publication

(a) The Chair of the Commission shall cause to be filed with the Office of Administrative Law:

1. All advisory opinions of the Commission rendered pursuant to N.J.S.A. 52:13D-21(g); and
2. Notice of any disciplinary action taken by the Commission pursuant to N.J.S.A. 52:13D-21(i).

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

19:61-5.3 Validity of rules of any portion declared invalid

If any rule, sentence, paragraph or section of these rules or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

Recodified from 19:61-5.4 by R.1992 d.97, effective March 2, 1992.
See: 23 N.J.R. 3436(b), 24 N.J.R. 864(a).
Deleted former 19:61-5.3, Continuation and amendment of rules.

19:61-5.4 Persons requesting 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 Commission's Administrative Code Rules, from the Executive Commission on Ethical Standards.

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

New Rule, R.1989 d.520, effective October 2, 1989.
See: 21 N.J.R. 1508(a), 21 N.J.R. 3179(c).
Adopted as 19:61-5.5; recodified old 19:61-5.5 to 19:61-5.6.
Petition for Rulemaking: Request to amend procedure.
See: 23 N.J.R. 3181(c).
Recodified from 19:61-5.5 by R.1992 d.97, effective March 2, 1992.
See: 23 N.J.R. 3436(b), 24 N.J.R. 864(a).
Recodified old 19:61-5.4 to 19:61-5.3.

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. Department of Environmental Protection; Land Use Regulation Program; or successor agencies:

i. Bureau of Coastal Regulation or successor agency (One chief and three regional supervisors classified as Supervising Environmental Specialists or successors performing those functions);

ii. Tidelands Resources Council or successor agency (members of the Council);

2. Department of Community Affairs (Division of Codes and Standards) or successor agencies:

i. Bureau of Construction Project Review or successor agency (Chief; assistant chief; supervisor, plans approval or successors performing those functions);

ii. Bureau of Housing Inspection or successor agency (Chief; supervisor, Housing Code Compliance assistant regional supervisor, Housing Code Enforcement or successors performing those functions);

3. State Athletic Control Board or successor agency (Commissioner; three members or successors performing those functions).

(b) The list in (a) above is in addition to the persons identified in N.J.S.A. 52:13D-17.2(a) as being covered by the provisions of the Casino Ethics Amendment.

Recodified from 19:61-5.5 to 19:61-5.6 by R.1989 d.520, effective October 2, 1989.

See: 21 N.J.R. 1508(a), 21 N.J.R. 3179(c).

Recodified from 19:61-5.6 by R.1992 d.97, effective March 2, 1992.

See: 23 N.J.R. 3436(b), 24 N.J.R. 864(a).

Deleted (b)1, definition of "person". Recodified old 19:61-5.5 to 19:61-5.4.

Amended by R.1997 d.88, effective February 18, 1997.

See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

Amended Agency references.

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

19:61-6.1 Applicability

The rules in this subchapter apply to all State officials in the Executive branch of State government.

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.

"Department head" means the administrative or executive head of the State official's agency or his or her designee.

"Direct benefit" means acceptance by a State official from the sponsor of an event or any other person of travel, meals, accommodation, waiver of conference or event fee or any other costs associated with attending the event for which no payment is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

"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 non-State government source and the invitation for which is extended to the State official because of his or her official position.

"Indirect benefit" means acceptance by a State official from the event sponsor or any other person of reimbursement for costs of travel, meals, accommodation, event fees, or any other costs associated with attending the event for which no reimbursement is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

"Interested party" means:

1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority of the State official's agency;

2. Any supplier, or employee, representative or agent thereof;

3. Any organization that advocates or represents the positions of its members to the State official's agency; or

4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

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

"Personal funds" means funds of a State official. It does not include funds that are loaned, advanced, promised or reimbursed to a State official for any purpose by an interested party.

"Published work" means any tangible medium of expression, including, but not limited to, literary, pictorial, graphic and sculptural matter; sound recordings; and software.

"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 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. The identity of the sponsor;
2. The purpose of the event;
3. The identity of other expected participants;
4. Whether attendance/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, benefits and/or honoraria provided by the sponsor, including whether the costs, benefits and/or honoraria are comparable to those offered to or purchased by other attendees.

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

(c) When an agency has numerous divisions or similar subunits with very diverse missions, the department head may request that the Commission permit that such divisions rather than the department be treated as agencies for the purposes of this subchapter. The department head shall provide the Commission with information identifying the diversity of the missions of the divisions and justifying their separate treatment as agencies.

Amended by R.1997 d.88, effective February 18, 1997.
See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).
In (b), amended N.J.A.C. reference.

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

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) Except as provided in (c) below:

1. The State shall pay the reasonable expenses of the State official associated with attending the event.
2. Neither the State official nor the State shall receive any direct or indirect benefit from any other source.

(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 must be identical to the benefits provided to other speakers or panel participants. If an actual conflict or the appearance of conflict could arise under the application of this subsection, (b) above shall govern. Approvals granted under this exception must be forwarded to the Commission for review.

(d) The State official may pay his or her own expenses with his or her personal funds.

(e) The State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

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 is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several Division 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, 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.

Amended by R.1995 d.329, effective June 19, 1995.

See: 27 N.J.R. 1376(a), 27 N.J.R. 2465(a).

Amended by R.1997 d.88, effective February 18, 1997.

See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

In (e), added third Example.

Case Notes

Agency commissioner who accepted meals from and participated in basketball league sponsored by regulated industry would be barred from public employment for five years. Executive Commission on Ethical Standards v. Salmon, 96 N.J.A.R.2d (ETH) 1.

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

(a) The State official shall secure the prior approval of the department head to attend such an event.

(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. An interested party shall not provide a direct or indirect benefit to the State official in order to facilitate his or her attendance.

(c) A State official making a speech or presentation at the event may accept an honorarium or fee from the sponsor.

(d) Under no circumstances shall a State official accept entertainment collateral to the event, such as a golf outing, or meals taken other than in a group setting with all attendees, or reimbursement therefor.

Examples

An employee of Travel and Tourism at the Department of Commerce has been invited, by the Mexican Tourist Bureau, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at a dinner on the final day of the meetings and has been offered a \$500.00 honorarium. With proper approval, the employee may attend the meetings and may accept an honorarium in connection with his speech. In addition, 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.

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.

Amended by R.1997 d.88, effective February 18, 1997.

See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

Deleted (b); and recodified former (c) through (e) as (b) through (d).

19:61-6.6 Use of official title for private fundraising

A State official shall not permit the use of his or her official title for the purpose of fundraising for a private organization.

New Rule, R.1997 d.88, effective February 18, 1997.

See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

Former section recodified to N.J.A.C. 19:61-6.7.

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

(a) A State official shall not accept compensation for published work(s) created as part of his or her official duties on State time utilizing State resources, but may accept compensation for published works not created as part of his or her official duties.

(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 departmental 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, and the following conditions:

1. Whether compensation is being paid by an interested party;

2. Whether the published work(s) uses or discloses information not generally available to the public;

(c) The State official shall prepare the published work(s) on his or her own time, without using the services of other State officials or resources owned by the State.

(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

As part of his official duties, a Department of Transportation employee evaluates surveying equipment and trains Department employees on its use. The employee recently completed an in-depth evaluation of ten different types of surveying instruments and made a recommendation to the purchasing unit. The employee would like to publish the entire report in Transportation Magazine. He has been offered \$500 for the article. The Department must make a policy decision as to whether the article may be published. The employee is prohibited from accepting compensation for the article, even if the Department grants permission for the publication, since it was created as part of his official duties prepared on State time and utilizing State resources.

An Environmental Technician at the Department of Environmental Protection has been asked to write an article for an environmental journal on how New Jersey's automobile emission standards differ from those of Pennsylvania. He has been offered \$500 for the article. The Environmental Technician is permitted to publish the article and receive compensation since it is on a subject matter related to, but not a part of, his official duties, so long as he prepares the article at home, on his own time, without using any State resources.

Recodified from 19:61-6.6 and amended by R.1997 d.88, effective February 18, 1997.

See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

Substantially amended (b)1 and (b)2; and recodified (b)3 and (b)4 as (c) and (d). Former section recodified to N.J.A.C. 19:61-6.8.

19:61-6.8 Sample approval request form

(a) The following form, or one containing substantially similar elements, may be used to request approval to attend events, accept honoraria, and/or accept compensation for published works.

**REQUEST FOR APPROVAL FOR
ATTENDANCE AT EVENT**

DEPARTMENT OF _____

Name _____ Division _____

Title _____ Telephone _____ FAX _____

Event _____

Sponsor _____

Is the sponsor an "interested party"? 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 ____

Amount of honorarium \$ _____

Employee Signature _____

Date _____

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

Attendance approved Yes ____ No ____

Acceptance of honorarium approved Yes ____ No ____

Conditions: _____

Employee Signature _____

Date _____

Recodified from 19:61-6.7 and amended by R.1997 d.88, effective February 18, 1997.

See: 28 N.J.R. 4755(b), 29 N.J.R. 593(a).

Added the "Note" relating to substitutions or changes to the request form.

SUBCHAPTER 7. RECUSAL PROCESS**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 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's counsel, agency ethics liaison officer or the Executive Commission on Ethical Standards as to the propriety of participation in a matter if a person requests that a State official recuse himself or herself from that matter. Oral advice, followed up by 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 or 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.

APPENDIX

Sample Recusal Statements

Sample Recusal Statement: Seeking Employment

DATE: _____

TO: Agency Ethics Liaison Officer
Executive 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 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 without consulting me or informing me that such matters are pending. This action is taken with the concurrence of my Division Director, 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.

	_____ Employee's Name
Recommend:	_____ (Name of Employee's Director/Supervisor)
	_____ Date
Approve:	_____ (Ethics Liaison Officer)
	_____ Date

Sample Recusal Statements 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 _____, 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 individuals/companies) _____ (names of colleagues/subordinates) to ensure that I do not receive any communi-

cations on any matters affecting _____
(names of individuals/companies)

Ethics Liaison Officer
Executive Commission on Ethical Standards

dls
c: subordinates responsible for screening communications

New Rule, R.2001 d.395, effective November 5, 2001.
See: 33 N.J.R. 2259(a), 33 N.J.R. 3757(b).