

# ***Ethics Bulletin***

The Newsletter of the New Jersey State Ethics Commission

**New Jersey State Ethics Commission**  
**28 W. State Street**  
**P.O. Box 082**  
**Trenton, New Jersey 08625**  
**609-292-1892**  
**Web Site: <http://www.nj.gov/ethics>**

## THE STATE ETHICS COMMISSION

Andrew S. Berns, Esq., Chair; Honorable William E. Schluter, Vice Chair;  
 Richard E. Constable, III, Esq.; Marc D. Larkins, Esq.; Michael E. Levin,  
 Esq.; Dr. Joann LaPerla-Morales; Honorable Lee A. Solomon  
 Executive Director, Peter J. Tober, Esq.

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### HOLIDAY PARTIES AND GIFTS

**Parties.** The staff receives numerous inquiries during the holiday season about the appropriateness of State employees attending parties hosted by individuals or entities with which their agencies deal in an official capacity. The Commission's Attendance Rules, *N.J.A.C. 19:61-6 et seq.*, are applicable to the majority of these invitations because most are extended to the State official because of his/her official position. In considering whether approval to attend an event should be granted, the Department head or designee, usually the Ethics Liaison Officer, must determine whether the party's host is an "interested party" and whether a legitimate State purpose will be served by attending. An interested party is defined in *N.J.A.C. 19:61-6.2* as:

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 agency 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.

A "person," as used in the definition, is any natural person, government entity, association, organization, firm, partnership or corporation. A "supplier" is any person that is providing or seeking to provide or may reasonably be expected to supply goods and/or services to the State official's agency, including but not limited to, consultants, vendors and lessors.

**In the case of purely social events sponsored by an interested party, the rule indicates that State officials cannot attend as guests of the sponsor.**

**Gifts.** Consistent with the zero tolerance policy adopted by the Commission in 2006, a State officer or employee is not permitted to accept a gift or anything of value related in any way to the State official's public duties. If you receive a gift that may have been given to you because of your State position, you must contact your Ethics Liaison Officer ("ELO"). The ELO shall return the gift or thing of value to the donor or shall otherwise properly dispose of it. The ELO is also responsible for keeping the records of all such occurrences, including the name of the employee who received the gift, the individual, and/or company from whom it was sent, and the final disposition of the gift or thing of value.

**Perishables.** Items of a perishable nature such as food and flowers must be reported to the ELO. The ELO or his/her designee will usually donate perishable items to a charitable organization in the name of the donor. Perishables cannot be consumed or shared by employees. Employees should not donate or otherwise dispose of perishables without contacting their ELO.

Unsolicited gifts or benefits of trivial or nominal value, such as complimentary articles offered to the public in general, and gifts received as a result of mass advertising mailings to the general business public may be retained by the recipient or the recipient's department for general use if such use does not create an impression of a conflict of interest or a violation of the public trust. An impression of a conflict may be created, for example, if an employee of a regulatory agency uses a pocket calendar conspicuously marked with the name of a company that it regulates or if an office in a State agency displays a wall calendar from a vendor, creating the impression of an endorsement. The receipt of such complimentary articles is not required to be reported to the ELO.

**The zero tolerance policy does not apply to gifts between employees, including co-workers, supervisors or subordinates; you may exchange holiday gifts with your coworkers and colleagues.** However, the Uniform Ethics Code advises that such gifts should not be excessive or inappropriate for a business environment. For more information, see the Uniform Ethics Code, III, Acceptance of Gifts available on the Commission's website at [www.state.nj.us/ethics/docs/ethics/uniformcode.pdf](http://www.state.nj.us/ethics/docs/ethics/uniformcode.pdf) and the Commission's Guideline - Gifts and Favors. The Commission staff and your ELO are also available to assist with any questions regarding holiday parties and gifts.

## **AN INTRODUCTION TO NEW JERSEY EXECUTIVE BRANCH ETHICS STANDARDS**

Employees of New Jersey State government come from diverse work backgrounds including federal, county or municipal government positions and positions in the private sector. In those former positions, employees have been subject to various corporate codes of conduct or federal or local government ethics laws and regulations. Upon commencing employment with a State agency in the executive branch of State government, employees are subject to ethics standards established by New Jersey statutes, regulations and executive orders. Ethics standards and requirements for Executive branch employees are different in many respects from those applicable to the private sector or federal and local government employees.

New employees in the executive branch become aware of ethics responsibilities and obligations through several means. They receive the Uniform Ethics Code ("UEC"), which contains the ethics standards applicable to all executive branch employees; and the Plain Language Guide to New Jersey's Executive Branch Ethics Standards ("Plain Language Guide"), which explains ethics standards in a narrative format. If a supplemental code of ethics has been adopted by an agency to address its particular needs and problems, a copy will be provided to a new employee.

All employees must complete an Outside Activity Questionnaire ("OAQ"). The OAQ provides, among other things, for disclosure of secondary employment and volunteer activities. The Ethics Liaison Officer ("ELO") reviews the completed OAQ to ensure that outside activities

do not conflict with the State employee's official duties and responsibilities.

Pursuant to Executive Order 24 (Governor Christie) certain categories of employees, including agency heads, assistant or deputy heads, directors and assistant directors, must file a Financial Disclosure Statement ("FDS") with the State Ethics Commission ("Commission") within 120 days of commencing employment. In each subsequent year of employment, the FDS must be filed on or before May 15th.

The above-referenced ethics documents and training are designed to ensure that employees understand the ethics rules that apply to them during and after their State employment. In the event an ethics question arises, the UEC and the Plain Language Guide also serve as reference materials for employees. Additionally, your agency's ELO is an important resource for employees whenever potential conflicts issues arise in the workplace or in connection with your State employment. The ELO, designated pursuant to Executive Order 24, is an agency employee who has been trained in the ethics requirements and can assist employees with ethics issues. Your ELO's contact information is available on the Commission's website: <http://nj.gov/ethics/agency/>.

If you have not received the ethics documents mentioned in this article or if you have any questions regarding executive branch ethics, please contact your ELO.

## **TRAINING REQUIREMENTS**

The State Ethics Commission recently updated its ethics training plan and revised the minimum ethics training requirements. Newly-hired or appointed State employees and special State officers must complete the comprehensive ethics training program, either in-person or on-line, within 60 days of commencement of their State employment or office. (In special circumstances, the Commission permits an employee to substitute the ethics brochure (Ethics Standards in Brief) for in-person or on-line ethics training.) Thereafter, each State employee and officer must complete comprehensive ethics training every three calendar years.

In any year in which an employee or officer does not receive comprehensive ethics training, he or she is required to complete the ethics briefing program. This program is available on the Commission's website at <http://nj.gov/ethics/training/online/index.html>, and on the Human Resource Development Institute's Learning Management System platform.

## **2012 ETHICS LIAISON OFFICERS' MEETING DATES**

Pursuant to Executive Order No. 24, the Commission is required to conduct quarterly meetings with all ethics liaison officers to ensure that the requirements of the Conflicts of Interest Law are understood and followed. The quarterly meetings for 2012 will be held at the Mary Roebling Building, 20 West State Street, Trenton, Room

219-220. The meetings start at 10 a.m. on the following dates:

Thursday, March 1, 2012  
Wednesday, June 6, 2012  
Wednesday, September 12, 2012  
Thursday, December 6, 2012

## **CASE SUMMARIES**

### **Recent Commission Cases**

#### **Secondary Employment in the Workplace**

All State employees must report outside activities such as second jobs and volunteer activities on an Outside Activity Questionnaire and receive the approval of their supervisor and Ethics Liaison Officer before starting a second job, business or volunteer activity. After a second job or outside activity has been approved, as a condition of approval, employees are advised of the following prohibitions:

- \* No use of State time for secondary employment or outside activities.
- \* No use of State resources or materials for secondary employment, including but not limited to computers, telephones, facsimile machines, e-mail, copy machines, mail service and office supplies.
- \* No solicitation of coworkers or outside business contacts as clients for outside businesses or activities, including but not limited to legal services, real estate services, accounting services, consulting services and sales businesses for cosmetics, kitchenware, jewelry, candles and other products.

When State employees use extensive work time and materials to conduct outside business, the Commission has found violations of both the Uniform Ethics Code and the sections of the Conflicts Law that prohibit an employee from using his official position to secure unwarranted privileges or advantages for himself or others and engaging in conduct that creates the impression that he has violated the public trust. Uniform Ethics Code, Appendix E, *N.J.S.A. 52:13D-23(e)(3)* and (7)

Here are some recent cases where the Commission found that employees violated the Conflicts Law and the Uniform Ethics Code by conducting outside business in their State offices.

#### **Tax Preparation and Cosmetic Sales in the State Workplace Case 19-09**

The investigation involved an allegation that a State employee was using State time for secondary employment as a tax preparer and cosmetics saleswoman. The employee had disclosed her secondary employment as a tax preparer on her Outside Activity Questionnaire. When that

employment was approved, the employee was advised in writing that she could not use State time and resources for her secondary employment. The employee did not disclose her involvement in cosmetic sales on her OAQ.

The investigation revealed that the employee was overheard discussing tax matters on the phone and received tax documents on the office fax machine. The employee was counseled by her supervisor regarding misuse of State time and equipment, but the conduct continued. Other colleagues testified that the employee received phone calls and faxes related to tax preparation on a daily basis during tax season and that the employee's co-workers often answered those non-State related phone calls when the employee was on her breaks. The employee was also observed preparing tax returns at her desk. Additionally, colleagues testified that they purchased cosmetic products from the employee, who distributed sales booklets, used State e-mail to inform them that their orders were ready and delivered the orders in the State workplace. A search of the employee's e-mail records uncovered her use of State e-mail for matters related to both tax preparation and cosmetic sales.

The Commission found, based upon both the employee's e-mail records and testimony from her colleagues, that she used State time and resources for her secondary employment as a tax preparer. Although the employee contended that the cosmetic sales were on behalf of a friend, the Commission held that the sales should have been disclosed on the OAQ and not transacted in a State office.

**The employee entered into a consent agreement acknowledging that she violated the Conflicts Law by engaging in outside employment during business hours and using State materials and resources for that employment. The employee, who is no longer in State service, paid a \$2,000.00 fine for these violations.**

#### **Private Law Practice in the State Workplace Case 08-10**

The investigation involved an allegation that a State employee had been using State time and resources including his State phone, photocopier, fax machine and computer to conduct a private legal practice. The employee disclosed his private law practice on his Outside Activity Questionnaire and noted on the OAQ that his outside law practice was conducted in compliance with all ethics rules and was not being performed for or with any other employees in his department.

The investigation revealed that the hard drive of the employee's State computer contained both documents and e-mails related to the private law practice. Despite the employee's assertion on his OAQ that he did not perform private legal services for any department colleagues, an e-mail sent from his State computer just four days after the OAQ was signed involved the employee agreeing to represent a colleague in a legal matter for a discounted rate. Another colleague intercepted a fax from one of the office

machines that related to the employee's private law practice. A review of the employee's State telephone records for a 14-month period revealed over 450 calls related to his private legal practice. The calls were made throughout the workday, and could not have conceivably been limited to the employee's lunch hour or break time. The majority of the calls were out of state, and the employee did not reimburse his agency for the costs of the calls.

The Commission found that the employee's use of State time and resources for his private legal practice spanned a lengthy period of time, was pervasive and ongoing and continued after he was investigated for this activity.

The employee entered into a consent agreement resolving the allegations that he engaged in outside employment during business hours and used State materials and resources for that employment. The employee, who is no longer in State service, paid an \$8,000.00 fine for these violations.

### **Financial Planning and Tax Practice in the State Workplace Case 14-09**

The investigation involved an allegation that a State employee was operating a private accounting business from his State office, including providing investment advice and preparing tax returns. The employee was a self-employed tax consultant and financial planner and disclosed those business activities on his OAQ. When he submitted the OAQ, the employee was specifically advised that he was prohibited from using State time and resources for his private business.

The investigation revealed over 700 e-mails on the employee's State computer related to tax preparation and financial services sent over a seven-year period. The employee also brought a personal laptop into the workplace. Data from the laptop revealed a large number of files for the employee's private tax clients created in a commercial tax software program, as well as the dates and times that the files were created or modified. A comparison of those files to the employee's State time and attendance records revealed that the files pertaining to the employee's private tax clients were often created or modified during the employee's State work hours. The employee's State phone and personal cell phone records revealed 522 calls related to the outside business over a two and a half year span, including calls to an investment company he was affiliated with but did not disclose on his OAQ. During the 54 working days of the 2009 tax season, the employee made 172 calls related to his outside business during his State work hours.

The employee's colleagues observed him conducting private business during the work day, both on the phone and in personal discussions with other department employees for whom he performed tax and investment services. One colleague testified that the employee

conducted private business in his State office on an almost daily basis, discussing tax returns, investments and retirement strategies. Of the employee's several hundred business clients, 47 were colleagues from his department. Thirty five of these colleagues dropped off or picked up their tax information at the employee's State cubicle. The department's Deputy ELO personally observed the employee preparing tax returns for department employees in his State cubicle. She counseled him twice, advising him not to conduct private business on State time.

The Commission found that the employee used his State office as a drop off and pick up site for clients who were his colleagues, prepared tax returns on State time, regularly used State e-mail during tax season to contact private clients and used his State phone to make calls to and receive calls from the investment company he was affiliated with. The employee's use of State time and resources to conduct his private business was open, significant and continuous, even after he was counseled to cease his activities by the Deputy ELO.

The employee entered into a consent agreement acknowledging that he violated the Conflicts Law by engaging in outside employment during business hours and using State materials and resources for that employment. The employee, who is no longer in State service, paid a \$20,000 fine for these violations.

### **Secondary Employment After Work Hours**

Second jobs that are held outside of State work hours can also present ethics issues if those jobs require some manner of contact with another State agency. When a supervisor and an ELO review secondary employment, they evaluate the possibility that a job might cause an employee to represent an outside party before any State agency. Representation includes personal appearances, as well as sending e-mails or correspondence to a State agency, making phone calls to a State agency and even signing documents submitted to a State agency on behalf of another party. All of these actions are usually prohibited by the ethics law, but the following case presents facts that carve out an exception to this prohibition. *N.J.S.A. 52:13D-16(b)*.

### **Representing an Outside Entity Before a State Agency Case 28-11**

A State employee sought approval to engage in outside employment with a company that was under contract to provide professional evaluation services to a State agency other than the State agency that employed her. Pursuant to the contract, the prospective outside employer was required to perform evaluations of individuals under the direct care of the contracting State agency. The evaluator who performs each evaluation is required to complete and sign a report, which is then submitted to the contracting agency. The evaluator might also be called upon to have contact with employees in the contracting State agency and answer questions regarding the evaluations. The State employee sought permission to engage in outside employment

performing these evaluations. In her official capacity, the State employee had no direct contact with the contracting State agency or with the individuals who would be evaluated pursuant to the contract between the other State agency and the prospective employer.

Under Section 16(b) of the Conflicts Law, State employees are prohibited from representing any party other than the State in connection with a matter pending before any State agency. The Commission has consistently held that signing substantive reports submitted to a State agency on behalf of a party other than the State constitutes impermissible representational activity (e.g. serving as a campaign treasurer and signing a report submitted to ELEC). The question addressed by the Commission in this case was whether the reports that would be submitted to the contracting State agency by the State employee would constitute representation of an entity other than the State. The Commission found that the reports submitted to the State agency were prepared on behalf of the State agency pursuant to a contract between the prospective outside employer and the contracting State agency. Under these circumstances, the Commission concluded that the outside employment was permissible because submission of the reports to the State agency constituted representation of the interests of the contracting State agency, not the outside employer, and therefore would not constitute the impermissible representation of the employer before the State agency under Section 16(b) of the Conflicts Law.

### **Gifts and Attendance at Events**

There is a zero tolerance policy regarding acceptance of gifts related to an employee's official State position. When employees accept gifts, the Commission has found violations of the Uniform Ethics Code's zero tolerance provision. Uniform Ethics Code Section III. The Commission has also found violations of the sections of the Conflicts Law that prohibit acceptance of things of value as well as the sections that prohibit employees from using their official position to secure unwarranted privileges or advantages for themselves or others and engaging in conduct that creates the impression that they have violated the public trust. *N.J.S.A. 52:13D-14 and 23(e)(3), (7) and 24.*

When employees attend events or meetings away from their office, they are often in a position to be offered gifts such as meals and outings. The Commission has adopted regulations that cover employees' attendance at events and business trips which provide guidance regarding what they may and may not accept in the course of business events or travel. *N.J.A.C. 19:61-6.1 et seq.*

A recent Commission case addressed three employees who violated the Conflicts Law, the Uniform Ethics Code and the Commission's Attendance at Events Rules by accepting gifts related to their official positions.

### **Acceptance of Meals, Entertainment and an Internship from a Vendor**

#### **Cases 16-09, 17-09 and 18-09**

The Commission received an allegation that three authority employees accepted lavish meals and entertainment from vendors that did business with their authority, and an additional allegation that one of the employees used his relationship with the one of the vendor's representatives to obtain an internship for his son.

The case involved three high-level employees who were responsible for the authority's numerous insurance contracts. The employees' duties included taking annual trips to meet with underwriters that were not based in the United States to prepare for renewal of the authority's insurance contracts. The overseas trips were authorized by the authority as necessary business travel and the agency paid directly for the employees' transportation and accommodations. Authority policy also allowed the employees to be reimbursed for meals in accordance with per diem limits set by the IRS. However, the employees and the vendor entered into an agreement whereby the vendor paid for all meals during the trips and the authority would reimburse the vendor at the IRS per diem rate.

The staff compiled information on eight overseas business trips. The employees completed and signed the required attendance forms for all of the trips. The forms indicated that the State was paying all of the allowable expenses for the trips and the ELO noted on some of the forms that since the trips were sponsored by a vendor, that the employees could not accept any additional benefits. Some of the trips were taken by all three employees, while others were attended by one or two. Sometimes the employees brought their spouses or girlfriends, who paid for their own travel costs.

The staff analyzed the value of meals provided to the employees by the vendor. The cost of many of the meals paid for by the vendor exceeded the reimbursable IRS per diem limits. In this instance, the vendor paid the cost of the meals in excess of what was reimbursed by the authority. The vendor also paid for all of the employees' spouses' and girlfriends' meals. In addition to the meals, the vendor paid for other benefits accepted by the employees and their traveling companions. The vendor provided the employees and their companions with wine, alcoholic drinks and cigars on numerous occasions. The vendor also paid for entertainment including sailing charters, golf outings, an island tour, theater tickets and a countryside tour. The employees did not reimburse the vendor for the meal costs that exceeded their per diem limits, for the meals accepted by their traveling companions or for the other amenities and outings they received. The total cost of these benefits exceeded \$8,300.00.

One of the employees also obtained an internship for his son with the vendor's insurance company. The employee admitted that his son obtained the internship based on the employee's relationship with the vendor's representative.

The Commission found that the three employees' acceptance of meals from the vendor that cost more than their per diem reimbursement limit violated the attendance regulations requirement that all allowable expenses for these trips must be paid for by the State. The Commission further found that the vendor's payment for the employees' traveling companions' meals and payments for amenities such as wine, alcoholic drinks, cigars and lavish outings for both the employees and their companions constituted acceptance of gifts that are neither allowable to take from a vendor nor properly reimbursable by a State agency. The Commission held that the employees' acceptance of these benefits created the appearance that their evaluation of the vendor's proposal for a lucrative contract renewal was influenced by the things they received and that their review of the proposal could be viewed as less than objective. The Commission also found that the internship obtained by one employee's son was a thing of value that was also offered by the vendor to further enhance its relationship with the authority employee.

The employees entered into consent agreements acknowledging that they violated the Conflicts Law by accepting meals and outings from a vendor, in violation of the zero tolerance policy regarding acceptance of gifts. The employees paid fines of \$6,750.00, \$7,000.00 and \$9,000.00. The amount of the fines was correlated to the number of trips each employee took and the amount of benefits that each received. The fines amounted to almost three times the value of the benefits taken by the employees.

#### **Misuse of Official Position**

The Commission uses the phrase "misuse of official position" to describe a broad array of different actions that raise ethical concerns under *N.J.S.A. 52:13D-23(e)(3)* or (7). State officials are not permitted to use their official positions to provide an unwarranted benefit to themselves or someone else, or in a way which creates the appearance that decisions or actions taken in their official capacity may have been influenced by their outside interest in the matter. Below are some recent cases providing examples of situations in which the Commission found a misuse of official position.

#### **Misuse of Official Position to Benefit a Personal Business Interest Case 50-09**

This case involved a member of the Real Estate Commission ("REC") who also held a real estate license and was the owner of a real estate business. For purposes of the Conflicts Law, members of the REC are special State officers. A dispute arose in a real estate transaction in which a Commissioner's private real estate business was the listing agent for a seller. The transaction had fallen through, and the buyer's agent was demanding a refund of deposit money that had been paid into the business account of the Commissioner's real estate firm. During a phone conversation with a staff member of the Commissioner's

real estate firm, the buyer's agent stated that he intended to make a complaint to the REC if the deposit money was not returned. The Commissioner was then placed on the phone and he openly and repeatedly identified himself as a member of the REC as he attempted to resolve the dispute with the buyer's agent.

The Commission found indications that the Commissioner used his official title to obtain a better resolution of the private conflict, or at least created the appearance that he was using his official position for this purpose. The Commissioner should not have identified himself as a member of the REC to the buyer's agent when he attempted to resolve a private business dispute regarding a real estate matter. By identifying himself as a member of the REC, particularly when the buyer's agent had stated his intent to file a complaint with the REC, the Commissioner was attempting to obtain an unfair advantage for himself by using his State position to influence the buyer's agent in connection with the dispute concern the deposit money. A member of the public knowledgeable of the facts could also reasonably believe that the special State officer was using his position on the REC to resolve a complaint against his own business and/or to deter the buyer's agent from filing a complaint with the REC.

A complaint was issued to the Commissioner alleging violations of sections 23(e)(3) and (e)(7) of the Conflicts Law. The Commissioner did not answer the complaint, so the Commission treated the matter as uncontested and issued a Final Order finding that the Commissioner violated the Conflicts Law, and imposed a \$5,000.00 fine.

#### **Misuse of Official Position to Benefit a Person with whom an Employee has a Private Business Relationship Case 04-06**

This case involved an employee of the Real Estate Commission ("REC") who had retained a real estate broker to assist her and her husband in finding a home and securing financing for the purchase of the home. While this private business relationship with the real estate broker was ongoing, the real estate broker became interested in hiring an individual whose license to act as a real estate salesperson had been inactivated due to a pending criminal indictment. When the indictment was dismissed, the real estate broker contacted the REC to ask what steps were necessary to have the salesperson's license reinstated. When his phone calls were not returned, the real estate agent contacted the employee directly to request her assistance. The employee contacted the REC investigator handling the salesperson's file, and asked her to review it. The employee then acted as a go between for the investigator and her real estate agent, advising the agent of documentation that was needed and then passing the information along to the investigator when she received it.

The Commission found indications that the employee violated the Conflicts Law by using her position to provide special assistance to her personal real estate agent, or at least created an appearance of doing so. State employees



cannot use their official position to obtain unwarranted benefits for themselves or others, or act in a way which creates the reasonable appearance that they are using their position for such impermissible purposes. Here, the employee lent assistance to her real estate agent on an official matter when he was having difficulty getting a response from other contacts within her agency, at a time when she had an ongoing business relationship with the real estate agent. The Commission concluded that the employee's involvement in the matter could be construed as an unwarranted benefit to the real estate agent, who likely received a faster response and resolution to his inquiry regarding the salesperson's license than he would otherwise have received. The Commission also concluded that her actions could appear to have been done to please the real estate agent with whom she had an ongoing business relationship, rather than for official business reasons, in violation of her public trust.

The matter was resolved by consent order. The employee acknowledged that her involvement in the licensing matter with the real estate agent on behalf of the State at the same time that he was acting as her real estate agent in a private capacity could create the reasonable appearance that she was engaged in conduct that violated her trust as a State employee. The employee agreed to pay a fine of \$500.00.

**Misuse of Official Position to Benefit a Personal Interest, Recusal, Misuse of Confidential Information, and Acceptance of Gifts**  
**Case 11-08**

This case involved a State employee who developed an acquaintance with an attorney while the attorney was representing a party on a pending permit application with her department. While the permit application was pending, the employee met the attorney for lunch on multiple occasions, had dinner at the attorney's home, and attended several social events, including a dinner at a private club in New York, all of which were paid for by the attorney. During the same timeframe, the employee offered to track the permit application for the attorney, and on several occasions she provided substantive status updates on the permit application to the attorney. The employee also informed the attorney that monies might become available from a settlement between her department and another party on an unrelated matter that could be used to resolve financing issues in the matter the attorney was handling. At the time of this disclosure, the proposed settlement terms in the other matter were confidential and not publicly available.

The Commission found indications that the employee violated several provisions of the Conflicts Law, as well as the Commission's recusal rule and the prohibition set forth in the Uniform Ethics Code against accepting gifts related to her official duties. Once the employee developed a personal relationship with the attorney, she should not have had any further involvement with the attorney's pending permit application at her department. The employee was also not permitted to disclose confidential information to

the attorney relating to a potential settlement in the other matter before her department. The State has a zero tolerance policy regarding the acceptance of gifts that are related in any way to an employee's official duties. The employee's acceptance of meals and other things of value from the attorney, at a time when he represented a client in a pending matter before her department in which she was actively involved, was not permissible because they could be construed as gifts given to influence the employee's exercise of her official duties.

The case was resolved by consent order. The employee acknowledged that her disclosure of confidential information to the attorney violated section 25 of the Conflicts Law, that her acceptance of meals and other things of value from the attorney may not have been permitted under Section III of the Uniform Ethics Code despite her preexisting acquaintance with him, and that her involvement in the permit application could have created a reasonable impression or suspicion among the public having knowledge of her acts that she may be engaged in conduct violative of her trust as a State employee. The employee paid a \$3,000.00 fine.

**Misuse of Official Position to Benefit a Personal and Financial Interest, Recusal**  
**Case 35-08**

This case involved a member of a State commission. The Commissioner's husband was an attorney who represented a client that had numerous matters before the commission. The Commissioner participated in and voted on the commission's determinations in matters handled personally by her husband, a name partner in a law firm, and/or by another attorney from his firm. In addition, the Commissioner actively participated in another application before the commission in which her husband, on behalf of a client, was actively involved and sought the commission's approval.

The Commission found indications that the Commissioner violated the Conflicts Law, as well as the Commission's recusal rule, through her involvement in matters in which her husband or his firm was involved. State officials are not permitted to have any involvement in matters in which they have a personal or financial interest. The Commission found that the Commissioner should have recused herself from any involvement in matters before the Commission involving a client of her husband, or in which her husband or his law firm were involved as counsel, because she had a financial interest in the matters.

The matter was resolved by consent order. The Commissioner admitted that her failure to recuse from participation in matters involving her husband's client, and her active participation in a matter which was supported by her husband on behalf of a client, violated the Commission's recusal rule and sections 23(e)(3) and (7) of the Conflicts Law. The Commissioner paid a fine of \$4,500.00. It is also noteworthy that the Commissioner had resigned her position on the Commission, and the

resignation was considered by the State Ethics Commission in determining an appropriate penalty in the matter.

### **Seeking Future Employment Case 13-10**

This case involved an employee who supervised a staff member who was substantially and directly involved in overseeing a grant issued by her department as well as the drafting of a new grant for the same grantee for the following year. The new grant proposal included funding for a new position with the grantee. While the subordinate was involved in overseeing the existing grant, and drafting the new grant proposal, she decided that she was going to retire, and she engaged in employment discussions with the grantee for the new position included in the grant proposal she drafted.

The employee was aware of her subordinate's intention to retire, and due to a State government hiring freeze was concerned with how the work currently being performed by the employee would be done when the subordinate retired. She was also aware of her subordinate's employment discussions with the grantee, because she was copied on e-mails between her subordinate and the grantee regarding employment discussions for the new grant position. The employee thought that if the subordinate filled the new position with the grantee when she retired, then the subordinate could perform the same duties she handled as a State employee through the grant position. When questions arose concerning whether the subordinate was permitted to seek or accept the new grant position with the grantee, the Ethics Commission staff inquired about whether the subordinate had engaged in any employment discussions with the grantee while working on matters for the grantee. The employee, through her Ethics Liaison Officer, assured the staff that no such conversations had occurred.

The Commission found indications that the employee's actions created the appearance that she had used her official position to benefit her subordinate. The employee was aware that her subordinate was actively seeking a position with the grantee, and she wanted the employee to get the position. Under these circumstances, the employee's misstatement to the Commission staff that no employment discussions took place between the subordinate and the grantee while the subordinate was working on matters involving the grantee, creates the appearance that she engaged in an effort to assure the Commission that the subordinate had not improperly solicited a position with the grantee, either to protect the subordinate from an ethics violation and/or to make sure that the subordinate remained eligible to fill the position with the grantee.

The matter was resolved by consent order. The employee acknowledged that her actions could have created the reasonable impression that she engaged in conduct violative of her public trust, and she agreed to pay a \$1,000.00 fine.

### **Post-Employment Restrictions**

**After leaving State service, a former employee is not allowed to have any involvement in a matter on behalf of a party other than the State if he was both substantially and directly involved in the same matter as a State employee.** A recent Commission case addressed the issue of whether a former State employee represented individuals in five cases that he was substantially and directly involved with while in State service.

### **Working on the Same Matters During and After State Service Case 32-07**

This investigation involved a former employee who worked for a State agency that evaluated claims and provided State funded compensation to claimants who met statutory criteria. The employee held a high-level position within the agency, and was responsible for reviewing complex paperwork relating to claims, ensuring that claims were compensable in accordance with statutory and regulatory requirements and that the amount of compensation was reasonable. The employee was one of three who were required to agree that a claim was compensable. Once that determination was made, the employee could make a decision on his own regarding the amount of compensation and sign and approve an order of payment.

After the employee retired from State service, he became the Executive Director of a private entity that represented many claimants before his former agency. The Commission's investigation revealed that after the employee left State service, he represented five claimants on matters in which he had been involved as a State employee. There was no dispute that each claim constituted a matter that the former employee had been involved with when working for the State, and continued to be involved with after leaving State service. The Commission then examined the level of involvement that the former employee had in each of the claims on behalf of the State. The Commission found that the former employee had made an initial determination that the claimant was eligible for compensation from the agency and/or he signed an order of payment for claims submitted in each of the five cases. After leaving State service, the former employee then represented the five claimants in those same matters, which were still pending before his former agency. In the course of representing the five claimants, the former employee sought and obtained additional compensation for those claimants, including payment of legal fees to himself, on the same cases on which he made decisions as an agency employee. The former employee made no effort to determine if he had been involved with the claims on behalf of the State before representing the five claimants as private clients and he did not request that his former agency screen the cases for potential post-employment conflicts.



The Commission held that the former employee's representation of clients on the same matters he was substantially and directly involved in as a State employee violated the Conflicts Law. The Commission also found that the employee should have evaluated his clients for potential post employment conflicts before undertaking their representation.

The employee entered into a consent agreement acknowledging that before providing representation regarding any claim he was involved with on behalf of the State, he should have either declined to represent the client or sought advice from the State Ethics Commission regarding whether such representation was allowed. The employee, who is no longer in State service, paid a \$3000.00 fine for the ethics violation. The former employee also paid restitution of over \$6000.00 to his former agency for the legal fees collected by him on the five claims he was ethically prohibited from handling.



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

**The Commission's newsletters are also available at:**

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