



GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Chair Ida Castro, Commissioner Kevin McCabe, Commissioner Paul Josephson, Commissioner Susan Bass Levin, Commissioner Alisha Griffin, Commissioner Lizette Delgado; Executive Director Rita L. Strmsky.

COMMISSION CASE NO. 05-01

SUBJECT: Interest in Substantial Conflict with Official Duties, Impairment of Objectivity, Appearance of Impropriety.

FACTS: In her official capacity, the special State officer was a member of a Commission designated to protect an area of the State's natural resources and guide its future development. The Commission member was also a private consultant to nonprofit organizations on environmental matters. The Commissioner voted on resolutions that affected the entity for which she performed consulting work.

RULING: The Executive Commission determined that there were indications that the State officer violated sections 23(e)(1), (5), and (7) of the Conflicts Law and authorized staff and counsel to draft a complaint. The matter was settled by consent order.

REASONING: The Executive Commission has a long line of cases in which it has considered the circumstances under which special State officers are required to recuse themselves. In these cases, the Executive Commission has recognized, pursuant to section 23(e)(8), that citizens who serve in government cannot and should not be

expected to be without any personal interest in the decisions and policies of government and that government officials and employees have a right to private interests of a personal, financial and economic nature.

Prior to this case, the Executive Commission had not specifically addressed the issue of whether the existence of a consulting relationship necessitates recusal. The Executive Commission determined that while the majority of cases reviewed by it involved a special State officer's employer or volunteer organization, there did not appear to be any rationale for adopting a less stringent standard in regard to consultants.

COMMISSION CASE NO. 06-01

SUBJECT: Post-Employment.

FACTS: The former State employee requested an opinion from the Commission as to whether he or his law firm was permitted to represent a client in connection with a second modification to a loan that he was involved with during his State employment. The former State employee was not involved in the original loan application or approval but was involved in the first modification of the loan.

RULING: The Commission determined that the former State employee was prohibited from representing the client in connection with the second loan modification. Because the former State employee did not have an interest in the law firm by which he was employed, and the firm was not a professional service corporation, the firm was not prohibited from representing the client in connection with the modification.

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

REASONING: When reviewing a post-employment matter, the Commission uses a two-pronged analysis: 1. Is the former employee representing, appearing for, negotiating on behalf of, or providing information or services not generally available to a party other than the State? 2. Was the former employee substantially and directly involved in the matter in question?

Because the former State employee was substantially and directly involved in the initial modification of the loan which related back to the original loan, he was prohibited from representing the company in connection with a second modification.

As to the extension of the prohibition to the firm, if a former State employee is employed by a company in which he/she does not have more than 10% interest, and the company is not a professional service corporation, the restrictions contained in the Conflicts Law pertain to him/her personally but do not extend to the company by which he/she is employed. Because the firm in question was a limited liability partnership and the former State employee had no interest in the partnership, the partnership was not prohibited, under the post-employment restriction, from representing the client in connection with the second modification.

COMMISSION CASE NO. 07-01

SUBJECT: Impairment of Objectivity, Appearance of Impropriety.

FACTS: An employee of a County Superintendent of Elections' Office requested an opinion from the Commission as to whether he was permitted to participate in the election campaign of a friend running for a municipal office in the County in which he was employed.

RULING: Proposed participation in friend's campaign for municipal office is not appropriate under the application of sections 23(e)(5) and (7) of the Conflicts Law.

REASONING: The Commission balanced the State employee's interests as an individual with the public's compelling interest in ensuring fair and unbiased elections. His substantial personal involvement in an election conducted by his agency could cause an observer to question the neutrality and fairness of the election process.

COMMISSION CASE NO. 13-01

SUBJECT: Casino Post-Employment Restriction.

FACTS: The former State employee requested an opinion from the Commission regarding the applicability of *N.J.S.A. 52:13D-17.2(c)*, the casino post-employment restriction, to his situation. The former State employee had been offered a position with a company that performed consulting services for casino licensees. If employed by the company,

the former State employee would not be involved in the casino-related activities performed by the company.

RULING: The Commission advised the former State employee that he was prohibited from representing, appearing for or negotiating on behalf of any holder of or applicant for a casino license. Because the former State employee's employment relationship with the firm constituted an association, the post-employment restriction of section 17.2(c) also extended to the firm.

REASONING: Pursuant to section 17.2(c) of the Conflicts Law, a "person" is prohibited for two years after leaving office from holding, directly or indirectly, an interest in, or holding employment with, or representing, appearing for or negotiating on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter. The restrictions contained in section 17.2(c) also apply to any partnership, firm or corporation with which such "person" is associated or in which he/she has an interest.

Because the former State employee was required to file a Financial Disclosure Statement ("FDS"), he was a "person" for the purposes of the section 17.2(c) post-employment restriction.

As to the applicability of the prohibition to the firm, in Advisory Opinion No. 40, the Commission was asked to render an opinion as to whether the section 17.2(c) restriction precluded a private law firm with which a former State employee desired to become associated as "of counsel" from representing, appearing for, or negotiating on behalf of, any holder of, or applicant for a casino license. The Commission determined that the proposed relationship between the former State employee and the firm represented an employer/employee relationship, and, within this context, the two-year post-employment restriction applied. The Commission noted that although the "association" prohibited by section 17.2(c) is not defined by the statute, the fact that it includes employment relationships is made clear by the internal sense of the provision, which refers to partners, officers, directors and employees as those deemed associated with partnerships, firms or corporations within the meaning of its terms.

In the case at hand, the Commission determined that, under Advisory Opinion No. 40, the former State employee was clearly "associated" with the firm and thus the ban also extended to the firm.

COMMISSION CASE NO. 15-01

SUBJECT: Representation, Unwarranted Advantage.

FACTS: The State employee represented the interests of members of his church, the pastors of his church, and the church itself in dealing with personnel in a Division within his own Department in connection with the Division's handling of a case. The State employee also used his

official position to gain access to regional and district office personnel.

RULING: The Commission determined that there were indications that the State employee violated section 16(b), 23(e)(3), and 23(e)(7) of the Conflicts Law and directed staff and counsel to draft a complaint. The matter was settled by consent order.

REASONING: Section 16(b) prohibits a State employee from representing, appearing for, or negotiating on behalf of any party other than the State on any matter pending before a State agency; only the situations specified in section 16(c) are excepted from the prohibition. The State employee's contacts with Division staff in regard to a pending case constituted prohibited representational activity.

Section 23(e)(3) prohibits a State employee from using his/her official position to secure an unwarranted advantage for him/herself or others. In this case, the State employee used his position within the Department to gain access to and promote a position to Division employees involved in the pending case.

The Commission also determined that the State employee's actions created an appearance of impropriety under section 23(e)(7).

COMMISSION CASE NO. 23-01

SUBJECT: Acceptance of Reward for Matter Related to Official Duties.

FACTS: The Agency requested an opinion from the Commission as to whether three of its employees were permitted to accept a stipend of \$10,000 in connection with a prize awarded by a national organization. The three employees, all attorneys, were awarded the prize for leading a racial profiling study and subsequent litigation in New Jersey. As a result of the litigation, the Department of Justice made racial profiling a national priority. The work recognized by the award was accomplished in the discharge of their official duties to provide legal representation to the Agency's clients.

RULING: The Commission advised the Department that the three employees were not permitted, under section 24 of the Conflicts Law, to accept the \$10,000 stipend in connection with the award.

REASONING: In Case No. 3-84, a State employee sought the Commission's review of a Departmental determination advising him that he could not accept a cash award from a regional association for a paper prepared by him as a Department employee. The State employee, on State time, prepared the paper as part of his official duties. The paper, which was funded out of project grant monies, was submitted by him to the regional organization and he was awarded the organization's research prize. The award provided for a \$100 cash prize. In that case, the

Commission determined that the State employee could not accept the cash award because it would not be consistent with section 24 of the Conflicts Law, which prohibits accepting any compensation, reward, employment, gift or other thing of value from a party other than the State in connection with one's official duties except under very limited circumstances. The State employee appealed the Commission's decision to the Appellate Division of the Superior Court. The Appellate Division upheld the Commission's determination that the State employee violated section 24 by accepting a cash award from the society for a paper prepared in the course of his official duties.

Thus, the Commission, in the current case, advised the agency that under its precedent, the three State employees were prohibited from accepting the stipend in connection with the award.

COMMISSION CASE NO. 25-01

SUBJECT: Casino Post-Employment Ban.

FACTS: The former Casino Control Commission ("CCC") member requested an opinion regarding the interpretation of *N.J.S.A. 52:12-60(a)*, one of the post-employment restrictions of the Casino Control Act over which the Executive Commission has jurisdiction. The former CCC member had been asked by a casino licensee to serve as an outside director on its Board of Directors, either compensated or uncompensated. The individual's membership on the CCC had terminated three years earlier.

RULING: The former CCC member cannot serve on the Board of Directors of a casino license holder or applicant until four years after the termination of his CCC employment.

REASONING: The issue arose because of the post-employment restrictions of section 60 of the Casino Control Act. Section 60(a) provides that "no member of the [CCC] shall hold any direct or indirect interest in, or be employed by, any applicant or by any person licensed by or registered with the [CCC] for a period of four years commencing on the date his membership in the [CCC] terminates." The Executive Commission advised the former CCC member that the legislative intent underlying section 60(a) suggests that he cannot serve on the Board of Directors of a casino license holder or applicant, whether he is paid a fee or not, until four years after the termination of his service on the CCC.

The Executive Commission noted that the legislative policy underlying the Casino Control Act, particularly with regard to restrictions on pre-, concurrent and post-employment, was explored in a prior Attorney General opinion, as follows:

There is implicit in the casino legislation an overriding legislative concern to regulate with a high degree of scrutiny both real and

apparent conflicts of interest in the governmental supervision of the casino industry. It was the express legislative purpose to foster “public confidence and trust in the credibility and integrity ... of casino operations.” *N.J.S.A. 5:12-1(6)*. See, also *N.J.S.A. 5:12-1(7), (8), (9), (13), (14), (15) and (16)*. To promote this and in recognition of the fact that “casino operations are especially sensitive and in need of public control and supervision,” *N.J.S.A. 5:12-1(9)*, the legislature has incorporated into the Casino Control Act a pervasive scheme for the regulation of both real and apparent conflicts of interest. See e.g., *N.J.S.A. 5:12-58(a), (b)* (pre-employment requirements); *N.J.S.A. 5:12-59* (regulation of outside activities and employment); *N.J.S.A. 5:12-59(f)* (restriction of political participation); *N.J.S.A. 5:12-58(d), (e)* (financial disclosure requirements).

The stringent post-employment restrictions are an integral part of this extensive regulatory scheme.

COMMISSION CASE NO. 34-01

SUBJECT: Contracts, Appearance of Impropriety, Unwarranted Advantage.

FACTS: The State employee requested an opinion from the Commission as to whether he was permitted, under section 19 of the Conflicts Law, to lease property to a Division within his Department. The State employee had responded to a request for Proposal issued by the Department by which he was employed.

RULING: The Commission determined that the State employee was prohibited from contracting with a Division within his Department because of issues of appearance of impropriety and unwarranted advantage.

REASONING: Section 19 prohibits a State officer or employee from entering into a contract, valued at \$25 or more, with any State agency. Section 19(b) exempts only three categories of contracts from this general prohibition.

1. Contracts made after public notice and competitive bidding.
2. Contracts that may be awarded without public advertising and competitive bidding pursuant to *N.J.S.A. 52:34-10* or similar applicable provisions; and
3. Any contract of insurance entered into by the Director of the Division of Purchase and Property, Department of the Treasury, pursuant to *N.J.S.A. 52:27B-62*.

The Commission has permitted a State employee to contract with State agencies, other than his/her own, when such contracts are subject to public notice and

competitive bidding, and the State employee receives prior approval of the Commission, with the understanding that he/she not use State time or resources or any information or services not generally available to the public in connection with the outside interests. The Commission has uniformly declined to permit competitive bidding on State contracts issued by an employee’s agency because of the issues of seeking an unwarranted advantage, section 23(e)(3) and an appearance of a violation of the public trust, section 23(e)(7).

COMMISSION CASE NO. 39-01

SUBJECT: Post-Employment.

FACTS: The former State employee requested an opinion from the Commission as to whether he was permitted to represent a client, XYZ, who was in the process of purchasing the assets of ABC company. ABC had a permit renewal application pending before the agency where the former State employee had been employed. The former State employee presided as hearing examiner on the original ABC permit and was also involved in a subsequent modification to the permit.

RULING: The former State employee is permitted to represent the client in connection with its application because it is a new matter for the purposes of the post-employment restriction.

REASONING: Under the post-employment restriction, a former State employee is prohibited from representing a party other than the State in connection with any matter in which he/she was substantially and directly involved during his/her State employment. In the current situation, the Commission viewed the XYZ application as a new matter for the purposes of section 17 under the agency’s rules. The ABC application was not transferable. Once the sale of ABC’s assets took place, the existing permit would be revoked and XYZ would be required to comply with the regulations applicable to new permits.

UPDATED GUIDELINES

The Commission staff recently updated the Guidelines, Official Interactions With Family Members. The Guidelines have also been expanded to include cases addressing the issue of dating relationships. The updated and expanded Guidelines, Official Interactions with Family Members/Cohabitants and Dating Relationships, are provided below and are also available on the Commission’s website.

OFFICIAL INTERACTIONS WITH FAMILY MEMBERS/COHABITANTS AND DATING RELATIONSHIPS

The Executive Commission staff frequently receives inquiries regarding the propriety of State officials interacting in the course of their duties with family members. The majority of the inquiries concern relatives

employed by the same State agency or interactions with family members employed in the private sector. Unlike the statutory framework in a number of other jurisdictions, the New Jersey Conflicts of Interest Law, *N.J.S.A. 52:13D-12 et seq.*, does not specifically address nepotism, favoritism shown to a relative on the basis of relationship.

Only the casino-related provisions of the Conflicts Law contain prohibitions that apply to a State official's immediate family members, defined in *N.J.S.A. 52:13D-13(i)* as the person's spouse, child, parent or sibling residing in the same household. *N.J.S.A. 52:13D-17.2(b)* deals with the concurrent casino-related employment of immediate family members while *N.J.S.A. 52:13D-17.2(c)* deals with post-employment situations of immediate family members. These two provisions are discussed below under "Casino-Related Prohibitions."

The Commission has addressed various family member issues over the years, primarily under the application of sections 23(e)(3), unwarranted privilege, 23(e)(4), direct or indirect personal financial interest that might reasonably be expected to impair objectivity and independence of judgment, and 23(e)(7), the appearance of impropriety. Summarized below are sample Commission cases that address a number of common family member scenarios.

STATE EMPLOYMENT

Family Members Employed by the Same Agency. In *Case No. 27-91*, the Commission considered whether the spousal relationship of the Chief of the Department of Labor Appeal Tribunal and her husband, a member of the Department of Labor Board of Review ("Board"), gave rise to a conflict of interest or appearance of a violation of the public trust. The Appeal Tribunal reviews determinations of the Division of Employment Security that are appealed by an aggrieved or dissatisfied claimant. The three-member Board of Review decides appeals of decisions issued by the Appeal Tribunal. The Chief did not decide cases; her job duties consisted of devising strategy and creating administrative policies for the Appeal Tribunal.

The Board adopted a policy precluding the Member from reviewing or having any connection with decisions issued by the Chief on those rare occasions when it was necessary for the Chief to conduct a hearing and function as an Appeals Examiner. The Commission concurred with the Deputy Attorney General who represented the Board that the recusal policy in place at the Board was a sufficient mechanism to avoid a conflict situation.

In *Case No. 19-98*, the Commission issued a complaint charging the Chairman of the Ocean County Soil Conservation District, Department of Agriculture, with violating sections 23(e)(4) and (7) of the Conflicts Law when he participated in a controversial matter pending before the District Board in which his brother, an employee

of the District, had substantial involvement and for voting on matters that involved personnel and salary issues affecting his brother.

Supervisor/Subordinate Relationships. In *Case No. 1161-83*, the Commission considered whether a situation where spouses worked for the same agency and had a supervisor-subordinate relationship constituted a conflict of interest. This situation was reviewed under the application of section 23(e)(4) of the Conflicts Law which prohibits State employees from acting in their official capacity in a matter wherein they have a direct or indirect personal financial interest that might reasonably be expected to impair their objectivity or independence of judgment.

The Commission determined that one spouse has a direct personal financial interest in the salary and continued employment of the other spouse and thus should not be in a position to provide direct supervision or to take personnel actions such as performance evaluations and salary increases. The Commission advised the agency to take administrative action to resolve the conflict situation, and the agency transferred one of the spouses out of the work unit.

In *Case No. 182-93*, the Department of Community Affairs requested an opinion as to whether Commission precedent prohibiting family members from having supervisor/subordinate relationships should also apply to non-related individuals who share the same household with the same financial interdependence that the Commission viewed as creating a conflict in spousal situations. The Commission determined that where non-related supervisor/subordinate employees share the same household under circumstances where there is financial interdependence, there must be an intermediate supervisory level between the two and the higher placed employee should have no supervisory or signing authority regarding personnel matters affecting the subordinate employee.

In *Case No. 9-94*, the Commission determined that the Conflicts Law was not violated by virtue of the fact that a Manager, Division of Motor Vehicles, Department of Law and Public Safety, worked in the same facility as his two cousins. Because the cousins were not members of the Manager's immediate family, as defined in section 13(i) of the Conflicts Law, the Commission determined that a supervisor/subordinate relationship was not per se prohibited under Commission precedent. The Commission reviewed the specifics of this particular situation and noted that the Manager did not directly supervise his cousins, complete their PARS or sign their time sheets. Thus, it was unlikely there could be an appearance of impropriety by virtue of his cousins working in the same facility.

Hiring of Family Members. In *Case No. 23-88*, the Commission was asked to approve the Department's removal of an employee from his position due to a number of violations of the Department's Code of Ethics. Among the violations was one that the employee secured employment for his daughter with a private organization

that received funding from the Department. The employee directly monitored the organization's performance under the contract. After the employee's supervisor learned of his daughter's employment, the employee was relieved of all monitoring responsibilities. After reviewing the various violations, the Commission concurred with the Department's findings and approved the proposed sanction.

In *Case No. 32-90*, the Commission reviewed an allegation that the Warren County Conservation District ("District") had contracted with the District Manager's wife for financial and bookkeeping services without public announcement or advertisement of the availability of the contractual position. The Commission determined that the circumstances surrounding the contract were violative of section 23(e)(3), the unwarranted privilege section of the statute. The contract between the District and the District Manager's wife was terminated.

In *Case No. 34-92*, the Commission found indications of violations of sections 23(e)(3), unwarranted privilege, and 23(e)(7), appearance of impropriety, in connection with the Sussex County District ("District") Manager's hiring and supervising of her son. The manager and her son resided in the same household. The Commission ordered that her son's employment with the District be terminated and that a complaint against the District Manager be prepared. The Commission later approved a consent order in this matter.

In *Case No. 2-93*, the Commission found indications of violations of section 23(e)(3), unwarranted privilege, and 23(e)(7), appearance of impropriety, in connection with the Director of the Library of the Blind and Handicapped's hiring and supervision of her daughter for summer employment. The position was never advertised to the job-seeking public and the Director did not use any of the State contractors who normally performed the services in question. The Commission approved a consent order with the Director.

In *Case No. 23-96*, the Commission issued a complaint alleging that a Deputy Superintendent of Elections violated the Conflicts Law when, among other activities, she hired and supervised six family members. The Deputy Superintendent entered into a consent order with the Commission.

In *Case No. 9-98(B)*, the Commission reviewed an allegation concerning the hiring of the son of the Director of Human Resources, Department of Corrections ("DOC"), for a position within the DOC. The Director had asked the Chief of the Bureau of Parole if he would be interested in hiring his son while a DOC employee was out on sick leave. The Bureau Chief then forwarded a personnel action request to the DOC Office of Human Resources seeking a freeze exemption to appoint a new employee. The form was signed by the Director. Other individuals were on the certified list who ranked higher than the Director's son and were not advised of the interim position. The Commission determined that there were indications that the State

employee violated sections 23(e)(3) and (7) of the Conflicts Law. The Director entered into a consent order with the Commission.

PRIVATE SECTOR SITUATIONS

In *Advisory Opinion No. 33*, issued September 17, 1975, the Commission determined that a Member of a County Board of Taxation must disqualify himself from hearing tax appeals when the assessor of the responding city is his second cousin or is more closely related to the Board Member. Because Members of the County Boards of Taxation act in a quasi-judicial capacity, the Commission was guided by cases interpreting the Canons of Judicial Ethics as applied to family member situations. It was noted that the need for unquestionable integrity, objectivity and impartiality is just as great for quasi-judicial personnel as for judges.

In *Case No. 344-76*, the Commission considered whether the Chief Engineer, Cable Television Section, Department of Public Utilities, was permitted to become involved in a challenge to the award of a franchise by the cable television company of which his son was President. If a company is denied a franchise in a municipality in favor of another company, it is the duty of the Chief Engineer to pass upon the engineering qualifications of the successful applicant. The Commission determined that it would be an appearance of a conflict if the engineer were to become involved in any way in the challenge of the subject franchise or any future action with respect to the company that employed his son.

In *Case No. 651-78*, a Member of the New Jersey State Council on the Arts, Department of State, requested advice from the Commission regarding actions affecting a grant recipient. The Member's husband was president of an advertising agency which performed public relations work for the grant recipient. The Member asked if it was necessary for the advertising agency that employed her husband to resign from the account. The Commission determined that it did not have the authority to require the private public relations firm to relinquish the account and recommended that the Member refrain from participation in discussion and voting on any matters pertaining to the grant recipient.

In *Case No. 35-79*, the Division of Youth and Family Services ("DYFS"), Department of Human Services, requested an opinion from the Commission as to whether there was a violation of the Conflicts Law for a DYFS employee to serve as Administrator of Management Operations while his brother was employed as a salesman for a company that sold equipment to DYFS. The Commission determined that to avoid any potential conflict or appearance of a conflict, the Administrator should in no way be involved in contracts negotiated or executed by DYFS or DHS with the company that employed his brother. Further, in his State capacity, the Administrator should not solicit any State business for nor refer any State business to his brother's employer. Also, neither his brother nor any

representatives of the company should call on the Administrator and the Administrator should have no involvement with matters pertaining to the company.

In *Case No. 941-80*, the Commission determined that it would not violate the Conflicts Law for the Director, Division of Hazard Management ("DHM"), Department of Environmental Protection, to review and approve contracts with an environmental company which was a subsidiary of the company that employed the Director's father-in-law. The parent organization had more than 30 subsidiary companies segmented into 9 control groups. The control group with which the Director's father-in-law was affiliated had no direct relationship with the environmental company that contracted with DHM. The Commission determined that the nexus was too remote to suggest that the Director was acting in his official capacity in a matter wherein he had a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

In *Case No. 1176-83*, the Commission determined that no conflict would result from the award of the Lottery Commission's advertising contract to the firm that employed the wife of the Deputy Chief of Staff, Office of the Governor, or by her assignment to perform work under that contract. The Commission noted the absence of any indication that the Deputy's spouse's position was offered to her for the purpose or with the intent of influencing him nor was there any evidence that the Deputy had used his position to obtain employment for his spouse with the bidder or to secure her assignment under the proposed contract. There was also no indication of any interest held by the Deputy in the bidder that would bar the contract under section 19, the contracting section of the statute.

As for the appearance of impropriety, the Commission noted that the Deputy's spouse had obtained employment with the bidder prior to their marriage and long before his appointment as Deputy and that the lack of involvement by him in bidding process matters involving the Lottery Commission, on the part of the Governor's Office, would substantially ameliorate any appearance problems. The Commission based its advice on the assumption that he would have no duties concerning this contract or the Lottery Commission in general, such as appointment of members, which might raise impairment of objectivity issues due to his personal financial interest in his spouse's employment. The Commission also cautioned the Deputy that willful disclosure or use of information not generally available to the public received or acquired in the course of or by reason of official duties is prohibited.

In *Case No. 25-84*, the Commission considered whether it was a conflict of interest for the Ombudsman, Department of Corrections, to handle inmate complaints concerning Corrections Officers represented by the union of which her husband was State President. The Ombudsman was generally responsible for receiving, investigating and making recommendations concerning complaints received

from persons incarcerated or on parole. The Commission determined that the Ombudsman and the Department should be advised that it is not consistent with the Conflicts Law for her to have involvement as Ombudsman in handling complaints concerning Correction Officers represented by the Union while her husband served as President. The advice was based on considerations of indirect interest, impairment of objectivity and appearance of impropriety.

In *Case No. 14-85*, the Commission approved the Department of Education's handling of a matter wherein the Program Manager, Gifted Education Contracts, Division of General Academic Education, recommended that her husband be employed as a consultant to the Division. The employee also recommended her husband as a consultant to a school district which received funding from the Department for a project related to the education of gifted students. The Department determined that the manager's recommendation of her husband as a Division consultant was violative of the Conflicts Law. She was also advised that she should not implicitly or explicitly make recommendations to local districts as to consultants or programs for gifted and talented education with which she has a direct or indirect relationship.

In *Case No. 17-85*, the Commission determined that the Medical Director, Division of Disability Determinations ("DDD"), did not use her official position to advance her husband's private medical practice. As a private practitioner in the field of internal medicine, her husband worked in conjunction with the DDD as a Consultative Examining Physician ("CEP"). The Commission based its determination on the fact that while the Medical Director's responsibilities placed her in direct contact with CEPs, she recused herself from all involvement regarding her husband and/or his specialty of internal medicine. The Medical Director had no direct control over the scheduling of examinations between DDD clients and CEPs. In addition, while it was the Director's responsibility to review a physician's qualifications prior to acceptance as a CEP, her husband became a CEP four years before she became Medical Director.

In *Case No. 25-85*, the Commission determined that the Chief, Bureau of Construction Code Enforcement ("BCCE"), Department of Community Affairs, violated the Conflicts Law by soliciting and receiving, on behalf of his daughter, a scholarship award from an organization whose members were regulated by the BCCE. The Chief's daughter received the award for academic year 1983. In 1984, she applied personally for the scholarship. The organization's Board of Directors questioned the propriety of awarding the scholarship to the daughter of the Chief of the BCCE and advised the Chief that the award would not be granted until the conflicts issue was resolved. The Commission determined that the Conflicts Law was violated and ordered the Chief to reimburse the organization for the amount of scholarship monies awarded to his daughter.

In *Case No. 9-86*, the Commission considered a request for advice as to whether a nominee to the Racing Commission was in a conflict situation due to his son's business relationship, as an insurance broker, for an organization regulated by the Racing Commission. The Racing Commission does not regulate the selection of insurance brokers but does require that a surety bond be submitted by the track owner's insurance broker. The nominee's son provided this bond to the Racing Commission. The Commission determined that there was no conflict of interest per se; however, the nominee was cautioned to abstain from discussions and voting on any insurance matters that came before the Racing Commission.

In *Case No. 27-89*, the Commission considered whether a Casino Control Commission Member was required to recuse herself on matters where one of the parties was represented by a law firm for whom her father worked as an accountant. The Commissioner had been associated with the same law firm that employed her father prior to entering State service. The Commissioner had recused herself on eight previous occasions. The Commission determined that the Commissioner should continue to recuse herself from all matters related to the law firm in order to support her ability to render independent decisions and to be so perceived.

In *Case No. 42-90*, the Chairman of the Casino Control Commission ("CCC") requested an opinion as to whether he was required, under the operation of the Casino Control Act, the CCC Code of Ethics or the Conflicts of Interest Law, to recuse himself from matters involving his brother-in-law, a credit executive with a casino hotel, and/or his brother-in-law's employer. The Commission determined that the Chairman should recuse himself from participation in any matter involving his brother-in-law or the credit department of the casino hotel by which he was employed and advised him that his intention, in any matters involving his brother-in-law's employer, to advise the interested parties on the record of his relationship and to provide the opportunity for any interested party to seek his recusal was an adequate measure to protect the public interest.

In *Case No. 245-93*, the Commission reviewed an allegation that the Administrator, Office of Set-Aside and Certification, Department of Commerce, certified a business owned by his son for eligibility to participate in a program administered by his office. The Commission determined that the employee violated section 23(e)(3), the unwarranted privilege provision, section 23(e)(4), the prohibition against acting in one's official capacity if one has a direct or indirect personal financial interest in a matter, and section 23(e)(7), the appearance provision, in regard to certifying a business owned by his son. The Administrator should have delegated another employee in the office to handle his son's application.

In *Case No. 1202-93*, the Commission reviewed an allegation that the Director, Division of Administration, Department of Education, used his position to influence the

award of grants and contracts to a school district employing his son. The Commission noted that most of the State funding to local school districts was awarded based on a statutorily mandated formula. Discretionary grants decisions are made by Program Division Heads with the Commissioner. The Division of Administration monitors and verifies the fiscal and statutory accuracy of grants and contracts after award decisions are made. The Commission voted to dismiss the complaint; however, the Director was advised to abstain from involvement in any matter which directly impacted his son's employment.

In *Case No. 23-97*, the Chief Planner, Hackensack Meadowlands Development Commission ("HMDC"), requested an opinion regarding her involvement on projects that directly or indirectly involve her husband's new employer. Her husband's employer was the environmental and engineering consultant on a project for which the Planner had been coordinator for ten years. Her husband had no involvement with the project. The Commission determined that the Planner could have no official involvement with projects that directly or indirectly involved her husband's employer regardless of whether her husband actually worked on the project.

In *Case No. 23-98*, the Senior Staff Engineer, HMDC, requested an opinion regarding her involvement on projects that directly or indirectly involve her husband. Her husband operated a consulting company and had been retained as a subcontractor to conduct an alternative site analysis required by the Army Corp. of Engineers. The State employee had been asked to assist in the review of the hydrology and hydraulics for the project in question. Her involvement would include the writing of a scope of work document to hire a consultant to review the hydraulics and hydrology prepared by the consultant and to act as a liaison. The Commission noted that even though the two tasks, the State employee's involvement with the hydraulics and hydrology segment of the project and her husband's involvement in the alternate site analysis, are unrelated, due to the high profile nature of the project and the controversy surrounding it, it was conceivable that the participation of family members on the project could become an issue. The Commission determined that, because the HMDC could easily assign another engineer to perform the hydraulics and hydrology review, there appeared to be no reason, under these facts, to grant an exception to the existing HMDC policy, affirmed by the Commission in *Case No. 23-97*.

In *Case No. 17-01*, the Acting Chief Engineer, HMDC, requested that the Commission review its decision in *Case No. 23-98* because her husband had not been involved with the project in question since July 1999. The Commission advised the Acting Chief Engineer that because her husband was no longer employed by the subcontractor and was not involved in the project, she was not precluded from having official involvement in the project.

In *Case No. 14-01*, the Acting Chief Engineer,

HMDC, requested an opinion regarding her involvement in a project that was being performed by a firm that recently hired her brother-in-law. The Commission determined that the Acting Chief Engineer should recuse herself from any involvement in matters involving the firm as long as her brother-in-law was employed by the firm.

Dating Relationships. In *Case No. 16-99*, the Ombudsman for the Institutionalized Elderly, Division of Senior Affairs, Department of Health and Senior Services, developed a dating relationship with a vendor to the Division. The vendor initially contracted with another State agency and later contracted with the State employee's division to develop a software program. The development and implementation of the software program was a multi-phase project. During the period of the project, the Ombudsman began a social and personal relationship with the vendor and worked on and signed licensing and maintenance agreements on behalf of the Division with the vendor. Shortly thereafter, the Ombudsman sought additional funding for the vendor to supply additional services.

The Commission determined that there were indications that the Ombudsman violated sections 23(e)(3), (4) and (7) of the Conflicts Law. The Commission determined that under the applicable sections of the statute and the Commission's precedent, the State employee should have recused herself from any official involvement with the vendor after her social and personal relationship began. The Commission entered into a consent order with the employee.

In *Case No. 43-98*, the Commission determined that the Assistant Executive Director of New Jersey Transit ("NJT") used his official position to secure an unwarranted advantage for his fiancé, an Account Executive at an insurance company. The insurance company was invited to provide additional insurance to NJT employees. NJT sent out letters to employees on NJT stationery, produced posters, and made insurance company sales representatives available on NJT premises. The Assistant Executive Director's fiancé received commissions on sales to NJT employees. The Assistant Executive Director entered into a consent order with the Commission.

Agency Contracts. In *Case No. 38-01*, the Commission determined that the Director, Juvenile Sex Offender Treatment Services, Juvenile Justice Commission ("JJC"), was prohibited from acting as a co-trainer with his wife as long as he was employed in his current position at the JJC. The Director's wife began contracting with the JJC in 1997, prior to his being hired by the agency. The Director had been assisting as a co-trainer since 1997. The Director's wife was paid the same fee as all other trainers. The Director was not compensated for his participation. The Commission determined that the Director's involvement as a co-trainer raised appearance concerns because of the financial interdependence of the parties.

In *Case No. 25-00*, the Commission determined

that the Executive Director of the Communications Institute at Rowan University violated the Conflicts Law by awarding a subcontract to a firm in which he and his adult children had a financial interest. The Director entered into a consent order with the Commission.

CASINO-RELATED PROHIBITIONS

N.J.S.A. 52:13D-17.2(b) provides:

No State officer or employee, nor any person, nor any member of the immediate family of any State officer or employee, or person, nor any partnership, firm or corporation with which any such State officer or employee or person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm, or corporation, shall hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter, except that (1) a State officer or employee other than a State officer or employee included in the definition of person, and (2) a member of the immediate family of a State officer or employee, or of a person, may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the Executive Commission on Ethical Standards, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the State officer or employee, or person, and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the State officer or employee, or person....

Section 17.2(b) addresses the issue of concurrent employment. Prior to 1993, section 17.2(b) prohibited all State officers and employees and members of their immediate families from holding an interest in, holding employment with, representing, appearing for, or negotiating on behalf of the holder of or applicant for a casino license or any holding or intermediary company with respect thereto. In December 1993, the Legislature amended the statute to provide that a State officer or employee, other than a State officer or employee included in the definition of "person" set forth in section 17.2(a), or a member of the immediate family of a State officer or employee, or of a person, may hold employment with the holder of or applicant for a casino license if, in the judgment of the Executive Commission on Ethical Standards, such employment will not interfere with the

responsibilities of the State officer or employee or person, and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest on the part of the State officer or employee, or person. Since 1994, the Commission has granted numerous waivers pursuant to the authority granted to it under the amendment.

N.J.S.A. 52:13D-17.2(c) provides:

No person or any member of his immediate family, nor any partnership, firm or corporation with which such person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm or corporation, shall, within two years next subsequent to the termination of the office or employment of such person, hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity, except that a member of the immediate family of a person may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the Executive Commission on Ethical Standards, ... such employment will not interfere with the responsibilities of the person and will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest, on the part of the person....

Section 17.2(c) deals with post-employment. Under this section, no "person," as defined in section 17.2(a), or any member of his immediate family shall for two years after the termination of State employment hold an interest in, hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for a casino license in connection with any matter or any holding or intermediary company with respect to any matter related to casino activity. Under the 1993 amendment, a member of the immediate family of a "person" may hold employment with the holder of or applicant for a casino license if in the judgment of the Executive Commission on Ethical Standards such employment will not create a conflict of interest.

CODES OF ETHICS

Codes of Ethics specific to a particular agency may also contain provisions applicable to family members. For example, the Code of Ethics of the Office of Administrative Law ("OAL"), Section IV, Paragraph B,

provides that "A conflict of interest exists ... when the employee, the employee's immediate family, or business would derive financial gain as a result of the employee's position in this office. Immediate family includes spouse, child, parent or sibling. In addition, Section IV, Paragraph C, provides that "No employee shall advocate or recommend for employment at the OAL any member of his or her immediate family."

State officers and employees should review their agency's code of ethics or consult with their agency Ethics Liaison Officer to determine whether the Code contains any provisions applicable to family members.

OTHER STATUTORY PROVISIONS

Statutory provisions and/or administrative regulations specific to a particular agency may also contain prohibitions applicable to family members. In *Case No. 21-72*, the Commission received a request for advice regarding whether an appointee to the Board of Trustees of the Commission for the Blind could hold that position in light of the fact that the appointee's husband was an employee of the Commission for the Blind. The Executive Commission sought an opinion from the Attorney General's Office because the determination turned on the interpretation of *N.J.S.A. 30:40-1* which provides that at least two members of the Board of Trustees of the Commission for the Blind shall themselves be legally blind but shall not be employees or related by blood, marriage or adoption to any employee of the Commission for the Blind. The appointee in question was legally blind; however, the Attorney General's Office advised that *N.J.S.A. 30:4-1* precluded the appointee from serving in such capacity because she was married to an employee of the Commission.

State officers and employees should consult with their agency Ethics Liaison Officer to determine whether there is any statutory provision or regulation that prohibits the agency's employment of or other contractual relationship with family members. The Commission does not have jurisdiction to interpret these provisions and refers such inquiries to the Attorney General's Office.

SUMMARY

In the case of spouses who work for the same agency, the Commission has determined that supervisor/subordinate relationships are not permitted because one spouse has a direct financial interest in the salary and continued employment of the other spouse and thus should not directly supervise or take personnel actions in regard to the spouse. This policy is also applicable to non-related individuals who share the same household with the same financial interdependence that the Commission views as creating a conflict in spousal situations.

In regard to other family members working for the same State agency, the cases are fact sensitive. The

Commission considers such factors as whether the individuals reside in the same household; the degree of the relationship; whether there is financial interdependence; the size of the work unit in question; whether there is direct supervision; and whether one family member is responsible for taking personnel actions that affect the other family member.

With respect to the hiring of family members, the Commission looks at the totality of circumstances surrounding the hiring to determine whether any unwarranted privilege has been afforded the family member.

As to interactions with family members or their private sector employers, the Commission generally recommends recusal from matters involving the relative and/or the relative's employer in order to eliminate any appearance of impropriety.

In the case of individuals involved in a dating relationship, the Commission has found violations of the unwarranted privilege and appearance sections of the statute in situations where the State employee had official involvement in a matter affecting the individual with whom he/she had a dating relationship.

In regard to the family-member casino-related prohibitions of sections 17.2(b) and 17.2(c), waivers may be requested by contacting the Executive Commission on Ethical Standards. Waivers will be granted if in the judgment of the Commission such employment will not interfere with the responsibilities of the State officer or employee and will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest.

Regarding "Guidelines"

**Please direct any comments or questions
about "Guidelines" to**

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