

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

CHAPTER 61

STATE ETHICS COMMISSION

Authority

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

Source and Effective Date

R.2006 d.292, effective July 19, 2006.
See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).

Chapter Expiration Date

Chapter 61, State Ethics Commission, expires on July 19, 2011.

Chapter Historical Note

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

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

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

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

Chapter 61, Executive Commission on Ethical Standards, was readopted as R.2001 d.395, effective September 27, 2001. As part of the provisions of R.2001 d.395, Subchapter 7, Recusal Process, was adopted as new rules, effective November 5, 2001. See: 33 N.J.R. 2259(a), 33 N.J.R. 3757(b).

Chapter 61, Executive Commission on Ethical Standards, was readopted as R.2006 d.292, effective July 19, 2006. As a part of R.2006 d.292, effective August 21, 2006, Chapter 61, Executive Commission on Ethical Standards, was renamed State Ethics Commission. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. ORGANIZATION

19:61-1.1 Scope of rules

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

Amended by R.2006 d.292, effective August 21, 2006.

See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).

Substituted "State Ethics Commission" for "Executive Commission on Ethical Standards".

19:61-1.2 Meetings and offices

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

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

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

19:61-1.3 Presiding member

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

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

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

19:61-1.4 Quorum

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

Amended by R.2004 d.390, effective October 18, 2004.

See: 36 N.J.R. 2316(a), 36 N.J.R. 4842(a).

Substituted "five" for "four" preceding "members of the Commission".

Amended by R.2006 d.292, effective August 21, 2006.

See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).

Substituted "Four" for "Five".

19:61-1.5 Executive or open meetings

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

19:61-1.6 Majority vote

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

19:61-1.7 Conflict with agency rules

Any conflict between the rules established by the Commission and those developed by the various State agencies to

implement their respective Codes of Ethics shall be resolved in favor of the rules established by the Commission.

19:61-1.8 Enlargement of time

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

19:61-1.9 Administrative head

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

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

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

19:61-1.10 Definitions

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

"Chair" and "Vice Chair" shall mean the members of the Commission designated by the Governor to serve as the Chair and Vice Chair thereof.

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

"Commission" shall mean the State Ethics Commission continued and established in but not of the Department of Law and Public Safety by the provisions of N.J.S.A. 52:13D-12 et seq.

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

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

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

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

attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at dinner on the final day of the meetings and has been offered a \$500.00 honorarium. The employee may attend the meetings but is not permitted to accept an honorarium in connection with his speech. He may accept, directly or by reimbursement, actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State, not to exceed the statutory limit of \$500.00.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant at the Department of Insurance who has been a long-time supporter of the organization. The organization plans to use the Technical Assistant's picture, name and official title on the promotional literature. The Technical Assistant may attend the event but is prohibited from allowing such use of his official title for fundraising purposes.

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

Deleted (b); and recodified former (c) through (e) as (b) through (d).
Amended by R.2004 d.390, effective October 18, 2004.
See: 36 N.J.R. 2316(a), 36 N.J.R. 4842(a).

Rewrote the section.
Amended by R.2006 d.292, effective August 21, 2006.
See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).

In (b)2i, deleted "or" from the end; in (b)2ii, inserted "; or" at the end; added (b)2iii; and in "Examples", substituted "the Commerce, Economic Growth and Tourism Commission" for "Travel and Tourism at the Department of Commerce".

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

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

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

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

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

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

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

rules of the Commission, any applicable administrative policies of the agency, and the following conditions:

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

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

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

(d) The State official shall not use his or her official title in any way in soliciting compensation.

Examples

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

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

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

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

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

Amended by R.2006 d.292, effective August 21, 2006.

See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).

In introductory paragraph of (b), inserted "the uniform ethics code", substituted "agency" for "departmental" preceding "code of ethics", deleted "departmental" preceding "administrative policies" and inserted "of the agency"; and in (d), deleted "and shall indicate that his or her views do not represent those of the State" from the end.

19:61-6.8 Approval request form

(a) State officials shall use the following form to request approval to attend events.

REQUEST FOR APPROVAL FOR
ATTENDANCE AT EVENT

DEPARTMENT OF _____

Name _____ Division _____

Title _____ Telephone _____ FAX _____

E-mail address _____

Event _____

Sponsor _____

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

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

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

Is the sponsor a nonprofit organization? Yes ___ No ___

If Yes, is the employee or agency a member? Yes ___ No ___

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

Location _____ Date(s) _____

Overnight accommodation required? Yes ___ No ___

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

Estimated cost? \$ _____

Agency to pay cost? Yes ___ No ___

Sponsor to pay cost? Yes ___ No ___

Employee to pay cost? Yes ___ No ___

Reason for attendance: _____

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

Employee Signature _____ Date _____

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

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

Conditions: _____

Signature _____ Date _____

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

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

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

Amended by R.2004 d.390, effective October 18, 2004.

See: 36 N.J.R. 2316(a), 36 N.J.R. 4842(a).

Rewrote the section.

Amended by R.2006 d.292, effective August 21, 2006.

See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).

Section was "Sample approval request form". Rewrote the section.

**19:61-6.9 Solicitation or acceptance of a thing of value
from an interested party**

(a) A State official shall not solicit or accept, directly or indirectly, any thing of value from an interested party.

(b) A State official must disclose and remit to his or her Department head any offer or receipt of any thing of value from an interested party.

(c) The Department head shall return the thing of value to the donor or, in the case of a perishable thing of value, trans-

fer it to an appropriate nonprofit entity in the name of the donor.

(d) A State official or his or her agency may retain and use unsolicited gifts or benefits of trivial value, such as complimentary articles offered to the general public, and gifts received as a result of mass advertising mailings to the general business public 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 a State official in 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 endorsement. If circumstances exist which create a reasonable doubt as to the intention with which the gift or benefit was offered, (c) above shall govern.

(e) The Department head shall keep records of all such occurrences, names of the State officials, individuals, and companies involved, and the final disposition of the thing of value.

New Rule, R.2004 d.390, effective October 18, 2004.

See: 36 N.J.R. 2316(a), 36 N.J.R. 4842(a).

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

(a) A State official must disclose to his or her Department head any offer or receipt of a thing of value from an entity other than an interested party.

(b) The Department head shall determine whether the thing of value was given or offered with the intent to influence or reward the performance of the State official's public duties and responsibilities, or whether it may be reasonably inferred to have been given or offered with the intent to influence the performance of his or her public duties and responsibilities, or whether the use of the item will create an impression of a conflict of interest or violation of the public trust.

(c) Upon a determination that there was an intent to influence or it could be reasonably inferred that there was an intent to influence the performance of the recipient's public duties and responsibilities, or that the use of the item will create an impression of a conflict or a violation of the public trust, the Department head shall return the thing of value to the donor or, in the case of a perishable thing of value, transfer it to an appropriate nonprofit entity in the name of the donor.

(d) Upon a determination that a State official may accept a thing of value from an entity other than an interested party, the Department head shall so notify the State official.

(e) A State official or his or her agency may retain and use 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 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 a State official in 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. If circumstances exist which create a reasonable doubt as to the intention with which the gift or benefit was offered, (c) above shall govern.

(f) The Department head shall keep records of all such occurrences, names of the State officials, individuals, and companies involved, and the final disposition of the thing of value.

New Rule, R.2004 d.390, effective October 18, 2004.
See: 36 N.J.R. 2316(a), 36 N.J.R. 4842(a).
Amended by R.2006 d.292, effective August 21, 2006.
See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).
In (b) and (d), deleted the last sentence.

SUBCHAPTER 7. RECUSAL PROCESS

19:61-7.1 Purpose

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

19:61-7.2 Scope

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

Amended by R.2006 d.292, effective August 21, 2006.
See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).
Substituted "1.10" for "7.3".

19:61-7.3 Definitions

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

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

"Relative" means a spouse, parent, child, sibling, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, or first cousin, whether in whole or half blood, by marriage, adoption or natural relationship, and the spouse of any such person.

Amended by R.2006 d.292, effective August 21, 2006.

See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).

Deleted definitions "Person", "State agency" and "State official".

19:61-7.4 Situations where recusal is required

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

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

(b) For purposes of (a) above, an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to or involving a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.

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

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

Examples

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

The Director of a program that regulates health insurance carriers has been approached about possible employment by a

regulated entity. The entity does not currently have any specific cause, proceeding, application or other matter pending. The solicitation must immediately be disclosed to the Director's supervisor and the Department Ethics Liaison Officer to avoid a situation where the State official may appear to be using his/her official position to gain an unwarranted advantage. The circumstances surrounding the solicitation and the State official's official interactions with the entity must be reviewed before the official proceeds with any job-seeking activities. If it is determined that the State official may respond to the solicitation, he must recuse himself from any involvement with the entity in his official capacity. Such recusal must conform to the standards of N.J.A.C. 19:61-7.5(b).

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

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

Amended by R.2006 d.292, effective August 21, 2006.
See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).

Rewrote (b) through (d) and Examples.

19:61-7.5 Procedure for recusal

(a) If a State official finds, or is advised by agency counsel or the agency ethics liaison officer, that an incompatible financial or personal interest exists on a matter, the State official must recuse himself or herself from that matter or seek advice from the Commission. The recusal must be absolute, that is, the State official must have no involvement with the matter from which he or she has recused himself or herself.

(b) All recusals, other than those provided for in (c) below, must be memorialized in writing. See the subchapter Appendix for samples. The writing must:

1. Specify the reason for and the date of the recusal;

2. Specify the duration of the recusal (which may be expressed in terms related to the pendency of the matter in the State agency);

3. Specify the effect of the recusal on the State official and his or her State agency (for example, that the State official is not to be contacted or involved or participate in any manner concerning the matter from which he or she has been recused);

4. Name the person who is to assume responsibility and authority for the matter from which the State official has been recused (if applicable); and

5. Be disseminated to all persons who might be affected by the State official's recusal and to the agency ethics liaison officer, who shall maintain the writing for as long as the State official serves in his or her position.

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

1. To the extent feasible, meeting materials involving a matter from which the State official must recuse himself or herself should not be distributed to the State official;

2. At the subject meeting, the State official must place his or her recusal and the reason for such recusal on the record prior to any discussion of the matter; and

3. The State official must leave the room at a non-public portion of the meeting while the matter in question is under discussion.

Amended by R.2006 d.292, effective August 21, 2006.

See: 38 N.J.R. 1804(a), 38 N.J.R. 3318(a).

Substituted "Commission" for "Executive Commission on Ethical Standards".

APPENDIX

Sample Recusal Statements

Sample Recusal Statement: Seeking Employment

DATE: _____
TO: Agency Ethics Liaison Officer
State Ethics Commission
FROM: Name of Employee
SUBJECT: Recusal — Seeking Employment with (Name of Outside Organization)

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

My seeking employment may present an actual or appearance of a conflict of interest; therefore, I must disqualify/recuse myself from any official duties that involve the above organization. I understand that I may not participate in any way as a State official in any matters regarding the above organization. Furthermore, I understand that it would be appropriate for any