



Ethics Bulletin

The Newsletter of the New Jersey State Ethics Commission

New Jersey State Ethics Commission
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CONTENTS

A Note from the Executive Director	Page 1
How Do I File an Ethics Complaint?	Page 2
Gifts	Page 3
Recent Commission Cases	Page 3
Compliance Update	Page 6
Training Update	Page 7

A Note from the Executive Director

There is a new section on the State Ethics Commission ("SEC") website entitled "Final Decisions, Orders and Advisory Opinions." In July 2014, the SEC began posting all final and non-confidential Commission reports, decisions and opinions on its website, pursuant to *N.J.S.A. 52:14B-2 et seq.* The SEC will not post decisions on matters that are not final agency decisions, such as ethics-related disciplinary matters initiated by a State agency which must be approved by the SEC but are then returned to the originating agency for disposition. Documents posted on the SEC website will include:

- **Consent Agreements:** Agreements entered into between the SEC and the target of an investigation which constitute the final resolution of a matter.
- **Dismissals:** Cases dismissed by the SEC.
- **Final Orders:** Orders issued by the SEC after a formal hearing at the Office of Administrative Law.

THE STATE ETHICS COMMISSION

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- **Casino Waivers:** Waivers allowing State employees or their immediate family members to work at a New Jersey casino or at an out-of-state casino that holds a New Jersey casino license.
- **E.O.14 Waivers:** Waivers allowing college and university trustees or their immediate family members to do business with an entity that does business with their institution.
- **E.O. 24 and E.O. 64 Fine Waivers or Modifications:** Waivers or modifications of fines assessed for the late filing of Financial Disclosure Statements or College and University Conflict of Interest Forms.
- **Advisory Opinions**

The cases discussed in this newsletter and the documents posted on the SEC website represent final decisions in matters where the Commission has investigated alleged ethics violations. That, however, is only one aspect of the SEC's work. The Commission also assists State officials in avoiding ethics problems. To help ensure that State officials understand ethics rules and State agencies follow ethics requirements, the SEC provides ethics

training, conducts agency compliance audits and offers advice to State officials on a daily basis.

The best way to avoid ethics issues, however, is to ask questions when you have an ethics-related concern or when you are uncertain if something is permissible. Every executive branch agency is required to appoint an Ethics Liaison Officer (“ELO”) to assist State employees and officers with ethics issues. The SEC staff is also available to assist both ELOs and State officials with ethics inquiries. Both the Commission and its staff would rather assist State officials in avoiding ethics problems than investigate State officials for alleged ethics violations. By seeking timely ethics advice from your ELO or our staff, you can partner with the SEC in achieving this goal.

A list of agency ELOs is located on the SEC website: <http://nj.gov/ethics/agency/>

You can also contact the SEC as follows:

- 609-292-1892
- 1-888-223-1355 (toll free in New Jersey)
- ethics@ethics.state.nj.us

How Do I File an Ethics Complaint? **What Happens When I Do?**

If you believe that an ethics violation has occurred, you should contact your agency’s ELO or the SEC. You may submit your allegation either verbally or in writing. If you identify yourself, that information remains confidential. If you don’t want to identify yourself, the SEC also accepts anonymous complaints. All ethics allegations that are made to a State agency must be forwarded to the SEC for a determination as to who should investigate the allegation. If the SEC determines that it is the appropriate agency to investigate an allegation, the matter is assigned to SEC staff.

If the SEC decides that the agency should investigate an allegation, the agency ELO or a designee will investigate the matter. If, after conducting an investigation, a State agency seeks to impose discipline on an employee for ethics-related violations, the proposed discipline must first be approved by the Commission.

If the SEC receives an ethics allegation, the staff reviews it to determine if the alleged conduct falls within SEC jurisdiction. If the SEC has jurisdiction, the staff initiates a preliminary investigation which may include interviews of the State officials involved, the person who filed the complaint, and any other individuals with knowledge of the alleged conduct. Interviews are conducted under oath and are

recorded. The interviewee may be accompanied by an attorney or union representative if he desires, but representation is not required. On rare occasions, interviews are conducted by telephone.

The SEC has the authority to issue subpoenas for testimony and documents if necessary. Investigations also frequently involve document review. No information regarding the allegation is made public during the course of a preliminary investigation.

After the investigation is concluded, a written report of the preliminary investigation is presented to the Commission. These reports are considered in executive, or closed, session and constitute privileged communications between the staff and Commissioners. The subject of an investigation is notified of the date that the matter will be considered by the Commission and may attend the meeting and bring a representative if he chooses to answer questions from the Commissioners. The Commission meeting is not a formal hearing and witnesses do not appear. If the Commission finds that there has been no violation of the Conflicts Law or the Uniform Ethics Code (“UEC”), it will dismiss the allegation during the public session of the meeting.

If the Commission determines that there are indications of a violation, it will authorize the staff to draft a complaint and engage in settlement negotiations. If the parties reach an agreement, the State official will enter into a consent order with the SEC. Consent orders almost always include a fine, the amount of which can range from \$500 to \$10,000 for each violation of the Conflicts Law or UEC. Consent orders are public records.

If the parties are unable to reach a settlement, the SEC staff will transmit the matter to the Office of Administrative Law for a formal hearing. After a full due process hearing, the Administrative Law Judge (“ALJ”) issues an initial decision, which may include a penalty of between \$500 to \$10,000 per violation, suspension, or termination of employment in the case of a willful and continuous violation. The initial decision is transmitted to the SEC for consideration and the Commission can adopt, modify or reject the ALJ’s initial decision. The Commission’s decision is considered a final agency decision that can be appealed to the Appellate Division of the Superior Court.

If you believe that you have information regarding an ethics violation, you are encouraged to notify your ELO or the SEC.



Recent Commission Cases



Gifts

Consistent with the Commission's zero tolerance policy, State employees and officers are not permitted to accept gifts that are related in any way to their official duties. If you receive a gift that may have been given to you because of your State position, you must contact your ELO. The ELO will return the gift to the donor or otherwise properly dispose of it. This includes perishable gifts such as food, alcohol or flowers. If you receive a perishable gift that was given to you because of your State position, it cannot be consumed or shared with other employees. It must be turned in or reported to your ELO, who will donate it to a charity in the name of the donor.

You are allowed to accept unsolicited gifts of trivial or nominal value that are offered to the general public, such as logo items. However, you might want to decline such items or refrain from using them in a business setting if their use creates the perception of an ethics conflict. The perception of a conflict may be created, for example, if an office in a State agency displays a wall calendar from a vendor that might create the impression of an endorsement. You do not have to report the receipt of items of trivial or nominal value to your 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, such gifts should not be excessive or inappropriate for a business environment.

For more information, see the Uniform Ethics Code, III, Acceptance of Gifts, and the Commission's Guideline - Gifts and Favors. The Commission staff and your ELO are available to assist with any questions regarding gifts.



Recusal

Recusal is required when a State official has a personal or financial interest that is incompatible with the performance of his official duties. Financial or personal interests are incompatible with a State official's duties when those interests impair his objectivity and independent judgment or create the appearance of impropriety. Examples of financial or personal interests that may require recusal include, but are not limited to:

- Outside Employment
- Sources of Income or Investments
- Prior Employment
- Leadership Roles in Professional or Trade Organizations
- Matters Related to Business Associates, Family Members or Friends
- Campaign Contributors

Below are two examples of Commission cases in which the Commission found ethics violations when an employee did not recuse himself from a workplace matter.

Recusal, Misuse of Official Position to Obtain Employment Case 12-08

This investigation involved allegations that an employee solicited employment with a school district while she had substantial and direct contact with the school district in her State position. The investigation revealed that in her State position, the employee reviewed the school district's program and budget and met frequently with the head of the school district. While the employee continued to interact with the school district in her State position, she applied for jobs with the district on multiple occasions. The employee was eventually interviewed and offered a high ranking position with the school district.

The Commission found that the employee should have recused from any involvement with the school district while she was engaged in efforts to obtain employment with the district, and that her efforts to obtain employment with the district while she was involved with it in her State position constituted an attempt to obtain an unwarranted benefit for herself as well as a violation of the public trust. The matter was resolved by a consent order in which the employee agreed to pay a civil penalty of \$7,500.00.

**Unwarranted Benefit, Recusal
Case 40-11**

This investigation involved allegations that a supervisor hired the same individual to work for the State agency where she is employed and also as an employee of her outside business. It was alleged that the supervisor directly supervised the subordinate in his State position, and that the supervisor and her subordinate frequently used State time and resources to communicate with each other about their outside business activities.

The investigation revealed that the supervisor, who was a director at her State agency, was also the president of a condominium association which employed her subordinate for various maintenance duties. After the subordinate was hired by the supervisor's agency, the supervisor subsequently approved a promotion for the subordinate, approved his Outside Activity Questionnaire ("OAQ") permitting him to work for the condominium association where she served as president, and approved his State phone bills, which allegedly contained calls related to his employment at the condominium. The supervisor also failed to disclose the outside business relationship with her subordinate on her OAQ.

The Commission found that the supervisor should have recused from any supervisory involvement with the subordinate in her State capacity, including his promotion and approval of his outside activities and phone bills, and that she was obligated to disclose on her OAQ that the subordinate worked for the condominium association on which she served as the president. The matter was resolved by a consent order in which the supervisor agreed to pay a civil penalty of \$500.00.

Nepotism

The Conflicts of Interest Law prohibits State officials from supervising or exercising personnel authority over their relatives. "Relative" is defined as any relative by blood, marriage or adoption and includes all relatives except for cousins. Below is a recent case in which the Commission considered an allegation of a nepotism violation.

**Supervision of Niece
Case No. 13-12**

This investigation involved allegations that a State official was supervising her niece. The investigation revealed that the employee directly supervised her niece when her niece was transferred into the employee's unit. The employee also approved two of her niece's performance evaluations while the niece was serving under her chain-of-command. The Commission found that both direct supervision and

evaluation of a relative are prohibited by the anti-nepotism provision of the Conflicts Law. However, the employee informed her supervisor of her relationship to her niece upon both her niece's transfer and before approving her evaluations, but was advised that it was not a problem for her to supervise her niece. The Commission therefore exercised its discretion and dismissed the matter without taking any further action. The Commission cautioned the employee, however, that in the future she should not directly supervise or have any involvement in personnel actions concerning relatives, including her niece.

Misuse of Official Position

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 a matter. Below are some recent cases in which the Commission found that employees misused their official position.

**Use of State Resources for Outside Business,
Recusal
Case 2-12**

This investigation involved allegations that an employee used State time and resources to conduct outside business activities and to market his outside business to other agency employees. It was also alleged that the employee failed to recuse himself from matters involving an employment company when he had a close personal relationship with the person at the company who managed its account with the employee's State agency.

The investigation revealed that the employee had a substantial number of documents and emails on his State computer related to his outside business and that he solicited employees to invest in his outside business during his lunch hour and during at least one business meeting. The investigation also found a significant number of emails in the employee's State email account between him and the person at the employment company which provided temporary employees for his agency. The emails showed that the employee had both an outside business relationship and a personal friendship with the person at the employment company. Nevertheless, the employee engaged in personnel discussions with the person at the employment company, including salaries for both a prospective hire and an existing employee provided through the company.

The Commission found that the employee's use of State time and resources to pursue his outside business provided him with an unwarranted benefit and violated the public trust, and that he should have

recused from any involvement with temporary employee issues involving the company where his friend worked. The matter was resolved by a consent order in which the employee acknowledged that his actions could give others the reasonable impression that he engaged in conduct that violated the public trust and he agreed to pay a civil penalty of \$4,000.00.

Church Business in the State Workplace Case 34-13

This investigation involved allegations that an employee was using her State-issued phone to conduct personal calls throughout the work day. The investigation revealed that over the course of several years the employee made thousands of calls, taking up hundreds of hours, on matters unrelated to State business. The employee was the treasurer and a member of the female auxiliary of her church and many of the calls were related to church matters.

The Commission found that the employee had provided an unwarranted benefit to herself and violated the public trust by using State time and her State phone for church related business. The matter was resolved by a consent order in which the employee agreed to pay a civil penalty of \$1,000.00.

Tax Business in the State Workplace Case 23-13

This investigation involved allegations that an employee was operating a tax service using State time and resources. The investigation revealed that the employee used his State computer to store materials related to his tax business and used his State email repeatedly over the course of seven years to conduct the outside business. The employee also occasionally used the State fax machine, printer and scanner for his outside business activities.

The Commission found that the employee provided himself with an unwarranted benefit and abused the public trust by extensively misusing State time and resources for his outside tax business. The matter was resolved by a consent order in which the employee acknowledged that he misused State time and resources to conduct his outside business and agreed to pay a civil penalty of \$7,500.00.

Use of State Information Technology Employee to Repair a Personal Laptop Case 13-13

This investigation involved allegations that a manager and an employee sought to have an agency Information Technology (IT) technician repair the employee's personal laptop on State time using State

resources.

The investigation revealed that an agency employee was working on State business at home on her personal laptop when the laptop froze and presented an error message. The next day the employee brought the laptop to the office to find out whether the State work she had done on the laptop could be restored and to find out what the error message meant. The issue was brought to the attention of the manager, who asked a technician in the IT department to take a look at the laptop. Although the employee who owned the laptop did not expressly ask any State employee to repair her laptop, she conceded that such a request could be inferred from her actions. The agency's IT technician did not repair the employee's computer, which the employee later brought to a private repair business.

The Commission found indications that both the manager and the employee misused their positions by seeking to have an agency IT technician spend State time and resources trying to diagnose and fix the employee's personal laptop. However, given that the reason for asking the technician to look at the laptop was to find out whether State work product on the laptop could be successfully retrieved, the Commission exercised its discretion and took no further action in the matter.

Gifts and Attendance at Events

When employees accept gifts related to an employee's official State position, the Commission has found violations of the Uniform Ethics Code's zero tolerance provision. 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.

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 can and cannot accept in the course of business events or travel.

Below are two recent cases in which the Commission found that an employee violated the Conflicts Law and the Uniform Ethics Code by accepting gifts related to his official position.

Unwarranted Benefit, Gifts, Recusal Case 23-12

This investigation involved allegations that an employee hired his girlfriend and then directly supervised her, as well as allegations that the employee accepted limousine trips and golf outings from employees of a vendor to his State agency.

The investigation revealed that the employee had developed a close personal friendship with a woman who he then recommended for employment at his State agency, without disclosing their relationship to his supervisor. After the woman was hired by the agency, the employee directly supervised her. The employee also acknowledged that he had developed personal friendships with employees of a vendor to his agency and that he had accepted a limousine ride and rounds of golf from the vendor representatives. The employee acknowledged that he frequently golfed with the vendor representatives and that they would alternate paying for rounds of golf.

The Commission found that the employee should have recused from any involvement in the hiring or supervision of his close friend, and that his acceptance of the limousine ride and free rounds of golf from employees of a vendor to his agency constituted an unwarranted benefit and a violation of the public trust. The matter was resolved by a consent order in which the employee agreed to pay a civil penalty of \$4,000.00.

Acceptance of Meals and Entertainment from a Vendor Case 18E-06

The Commission received an allegation that numerous employees of Treasury violated the Conflicts Law and the Treasury Code of Ethics by accepting meals and other things of value from a vendor to Treasury. This is one of the final cases of the many that arose from these allegations.

The investigation revealed that on numerous occasions, an employee attended lunches with employees of a vendor to his agency. Although the employee maintained that he paid his fair share for all meals and drinks that he consumed at the lunches, he acknowledged that there were occasions when he took insufficient care to document his payment for the meals and drinks he consumed while dining with



the vendor's representatives.

The employee entered into a consent order acknowledging that his actions could create the impression that he engaged in conduct which violated the Conflicts of Interest Law and his agency Code of Ethics and agreed to pay a civil penalty of \$300.00 for the violations.

Compliance Update

The Commission conducts periodic audits of each agency's ethics program. The goal of the Commission's audit is to ensure that the proper documentation and procedures are being consistently followed by each agency. The Commission's Compliance Officer meets with the agency ELO to discuss the program and procedures and prepares a report identifying areas of concern as well as areas that have been handled well by the agency. In 2014, the following agencies were audited:

1. Department of Human Services
2. Office of the Attorney General
3. New Jersey Turnpike Authority
4. Victims of Crime Compensation Office
5. North Jersey District Water Supply Commission
6. Division of Criminal Justice
7. Schools Development Authority
8. Higher Education Student Assistance Authority
9. New Jersey Pinelands Commission
10. New Jersey Meadowlands Commission
11. Casino Control Commission

The Commission is auditing additional agencies through the end of the year. If you have any questions or concerns about the compliance review process, please contact Ethics Compliance Officer John Hughes at (609) 292-1892.

Training Update

The Commission provides mandatory ethics training to executive branch agencies, authorities, boards and commissions as required by statute. Training can be completed by attending an in-person session conducted by the Commission's Training Officer, taking the on-line training program through the SEC website, or by viewing the Commission's training program in a group setting. Departments and agencies that received full training this year include the Department of Labor, the Department of Military and Veterans Affairs, the Department of Human Services, the Department of Law and Public Safety, the Department of State, the New Jersey Housing and Mortgage Finance Agency, the Office of Homeland Security and Preparedness, the State Parole Board, the South Jersey Transportation Authority and the New Jersey Meadowlands Commission.

If you have any questions about the SEC's training program or training requirements, please contact Ethics Training Officer Margaret Cotoia at (609) 292-1892.

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>