

CODE OF CONDUCT FOR MEMBERS OF THE NEW YORK STATE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT

INTRODUCTION

The New York State Commission on Ethics and Lobbying in Government exists to foster public confidence in State government and is responsible for interpreting, administering, and enforcing the State's ethics and lobbying laws. (See, Executive Law § 94(1)(a). For the Commission to succeed, it must first and foremost foster the public's confidence in the Commission itself. To this end, the members of the Commission adopt this Code of Conduct and commit themselves to adhering to the highest standards of conduct for:

- Impartiality: by maintaining independent judgment in performing their duties. [POL § 74(3)(a)]
- Confidentiality: by understanding the types of information that may be shared with colleagues and members of the public, not sharing confidential information acquired in the course of performing their official duties, and not using confidential information to benefit themselves or someone else. [POL § 74(3)(b),(c)]
- Stewardship of State resources: by refraining from using their official position to secure unwarranted benefits or favors for themselves or others, and not using the resources of the State for their own or another's personal use. [POL § 74(3)(d)]
- Preventing financial conflicts: by abstaining from personal investments that conflict with their official duties and recusing themselves from any official matter involving an entity in which they may have a direct or indirect financial interest. [POL § 74(3)(e), (g)]
- Integrity: by avoiding situations in which it may appear they could be influenced or would attempt to influence someone else and conducting themselves in a manner that does not raise suspicion among the public that they are personally benefitting from their official position. [POL § 74(3)(f)]
- Business with the State: by undertaking to accept limitations or restrictions on their working for or providing goods and services to entities subject to the Commission's jurisdiction. [POL § 73(4)(a)]

Commented [BKkk(1): I have in my notes that the Commissioners wanted to add the statutory citations on which the Code of Conduct is based.

Commented [BS(2): As p[er] diem commissioners, they are not bound by POL 73 but, nonetheless, are agreeing to be governed by the same constraints

CONFLICTS OF INTEREST

Avoiding Conflicts of Interest — Prohibited Conduct

To avoid conflicts of interest members are prohibited from:

1. directly or indirectly communicating, without prior authorization by the Commission, with the public official who appointed them to the Commission, or who directly reports to that official, with respect to any matter that is or reasonably may come before the Commission, except in an open meeting. A person 'directly reports' to an official if that official is their direct supervisor or if the person would, as part of their official or informal duties, be responsible for keeping the official informed about matters related to the Commission or to the official's personal ethical responsibilities. A public official who appointed a member may communicate in writing with the Commission as a whole through the Commission chair, who shall share the writing with the entire Commission. The writing shall be made part of the record of any relevant matter or of the Commission's work to which it relates.

2. directly, indirectly, or through another appearing or rendering professional or other services in relation to any matter before the Commission
3. directly, indirectly, or through another knowingly appearing or rendering services against the interest of the Commission in relation to any case, proceeding, application, or matter before any adjudicative body.
4. knowingly having an interest, directly or indirectly, in any contract made by the Commission. In the event a member learns of such an interest, after execution of any such contract, they will immediately disclose it to ~~the all~~ Commissioners, the Executive Director and the General Counsel in writing.
5. having any interest, financial or otherwise, direct or indirect, or engaging in any outside activity which is in substantial conflict with the proper discharge of their duties as a Commission member.
6. ~~without prior authorization by the Commission,~~ initiating or knowingly engaging in substantive communications, without prior authorization by the Commission, with any person who has any direct or indirect interest in any matter before the Commission or any matter that may reasonably be expected to come before the Commission [about that matter. With respect to any discussions with such persons concerning other matters, such discussions shall be disclosed to the eCommission, eExecutive eDirector, and eGeneral eCounsel promptly in writing.]

Commented [KCS3]: Was this phrase to be inserted here?

Commented [BS(4R3)]: I did not capture that in my notes, but I may have missed that. It works either way. But it does – either way - leave hanging the question of curative steps so that they are not profiting, directly or indirectly, from a contract with the Commission

Commented [SNB5]: Staff's recommendation is that this prohibition be applicable to any substantive discussion with such person or persons. If, however, the prohibition is limited to communications about the matter that is or may come before the Commission, then there should be prompt disclosure of any other Communications with such persons.

Commented [BKkk(6R5)]: I think this is confusing – are we saying that Commissioners should not engage in substantive communications on any matter that may reasonably be expected to come before the Commission? Or that they can't talk to the person/entity about the matter the person/entity has an interest in?

Commented [BKkk(7R5)]: What about, "without prior authorization by the Commission, initiating or knowingly engaging in substantive communications with any person who has any direct or indirect interest in any matter before the Commission, about that particular matter(s). With respect to any matter that may reasonably be expected to come before the Commission, or other matters before the Commission, Commissioners should promptly disclose those discussions, in writing, to the Commission, Executive Director, and General Counsel.

Preventing Conflicts of Interest — Recusal

1. General Rules for Recusal
 - a. The Executive Director or their designee is responsible for making all reasonable efforts to apprise the members of the identity of all persons who may be the subject of Commission consideration or action in advance of such discussion so as to afford the members an opportunity to consider the need for recusal.
 - b. Members are expected to recuse themselves from all Commission deliberations and votes on matters relating to any organization, entity, or individual where they have a conflict of interest or their impartiality in the deliberation or vote might be reasonably questioned. In the first instance, it is the member's responsibility to identify a possible conflict of interest or other factor that may affect their impartiality.
 - c. Members are expected to review their pre-meeting agenda and package and identify any party who may raise a question of a conflict of interest or impartiality.
 - d. Members are expected to review their professional activities, associations, employment, and relationships for potential conflicts of interests on an ongoing basis.
 - e. With respect to any matter from which a member is recused, the member is responsible for notifying, in writing, the Executive Director, General Counsel, and the other Commission members as soon as practicable. The notice need not give the reason for recusal, except as required by law.

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- f. If members have any questions, concerns, or doubts regarding the need for recusal, they are expected to contact the Executive Director or the General Counsel for guidance and advice. The request for guidance and advice shall be treated as confidential and advisory only. However, if the member is advised that recusal is warranted and the member does not agree, the member will be deemed to be recused until the Commission has the opportunity to vote on whether recusal is warranted. Any required Commission vote shall be taken in executive session at the next scheduled meeting following the member's receipt of the rejected advice.
- g. A member who has been recused from a particular matter will receive no further information from the Commission or Commission staff regarding the matter. In addition, the minutes of meetings sent to the recused member will be redacted accordingly to avoid disclosure to the member of information relating to the matter.

Commented [KCS8]: My notes indicate that this was supposed to be rewritten.

Commented [BS(9R8): This was tabled.

2. Situations Requiring Recusal

- a. Financial or Personal Interest Matters. Members are expected to recuse themselves if they have, or have had within the prior two years, any financial or personal interest, direct or indirect, that is incompatible with the discharge of their duties or might reasonably be expected to impair their objectivity and independence of judgment in the exercise of their official duties. A financial or personal interest includes, but is not limited to:
 - i. employment
 - ii. a debtor/creditor relationship
 - iii. a fiduciary relationship
 - iv. a source of income
 - v. a matter pertaining to a known relative (i.e., a spouse, domestic partner or person who is a direct of the individual's grandparents or the spouse of such descendant)
 - vi. investments whereby a decision of the Commission could reasonably be expected to result in any material impact on the value of such investment, either positive or negative
 - vii. a past or present leadership role or other substantial role in a professional, trade, charitable, or not-for-profit organization
 - viii. a matter pertaining to a business investment or contractual relationship
- b. Any other situation, even in the absence of financial or personal interests, depending on the totality of the circumstances.
- c. Prior Private Sector Official Matters. Members are expected to recuse themselves from an official matter involving a private sector individual, association, corporation, or other entity that employed or did business with the member within the prior two years, provided the member had significant involvement in the matter. -'Significant involvement' includes any decision-making or approval authority over the matter.

GIFTS AND SPECIAL TREATMENT

1. No member shall, directly or indirectly, solicit, accept, or receive any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, or promise, under circumstances in which it could be reasonably inferred that the gift was intended to influence the member or could be reasonably inferred as intended as a reward for any official action on the member's part. Members are encouraged to seek an informal opinion in the event of any questions or doubt as to whether

acceptance of the gift is improper or gives an appearance of ~~an~~impropriety.

2. No member should use or attempt to use their membership on the Commission to secure any unwarranted privilege or exemption for themselves or another, including but not limited to the misappropriation to themselves or another of the property, services, or other resource of the State for personal, private business, or any other purpose not a part of that member’s official State duties or responsibilities.

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CONFIDENTIAL INFORMATION

Members should make every effort to protect the confidentiality of Commission activities and avoid the unauthorized disclosure of information obtained through their work in accordance with the requirements of Executive Law §94(11). [Members who are determined to have intentionally and without authorization released confidential information shall be subject to the penalties set forth in Executive Law §94(11)(d), guilty of a class A misdemeanor.]

Commented [SM(10): The Commission can’t convict. Should this say something like “will be referred to appropriate authorities with a recommendation for prosecution for a class A misdemeanor.”

Commented [BS(11R10): I agree that the Commission can’t create or impose criminal law penalties. I think we can cross-reference the relevant statutory provision, however.

Commented [BK(12): My notes indicate they wanted to include the language from 94(4)(e)

Commented [BS(13R12): Agreed.

PROHIBITED POLITICAL ACTIVITY

Members shall not make or solicit from other persons, any contributions to candidates, political action committees, political parties or committees, newsletter funds, or political advertisements for election to the offices of Governor, Lieutenant Governor, Member of the Assembly or the Senate, Attorney General, or State Comptroller during the term of their service to the Commission.

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POST-COMMISSION POLICIES

No member shall, within a period of two years after leaving the Commission, appear or practice before the Commission or receive any compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any matter before the Commission. [POL § 73(8)(a)(i)]

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No member, after leaving the Commission, shall at any time appear, practice, communicate, or otherwise render services before any State agency or receive any compensation for services rendered on behalf of any person, firm, corporation, or other entity, in relation to any case, proceeding, application, or transaction in which such member was directly concerned and in which the member personally participated during the member’s term on the Commission, or which was under the member’s active consideration. [POL § 73(8)(a)(ii)].

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VIOLATIONS OF CODE OF CONDUCT

Any conduct violative of this Code of Conduct will subject the member to action by the full Commission

pursuant to Executive Law §94(4)(c).]

AMENDMENT TO CODE OF CONDUCT

The Commission may amend this Code of Conduct, as necessary; however, no amendment may be adopted at the same meeting at which it has been proposed, so as to allow the public the opportunity to comment on the proposed amendment.

STATUTORY REFERENCES

See Public Officers Law §§ 73 and 74.

Commented [SNB14]: Staff's view is that best practice would be to implement such a provision by regulation through formal rulemaking.

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