

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

PREAMBLE

As the New York state Legislature expressed in enacting Public Officers Law § 74:

Government is and should be representative of all the people who elect it, and some conflict of interest is inherent in any representative form of government. Some conflicts of material interests which are improper for public officials may be prohibited by legislation. Others may arise in so many different forms and under such a variety of circumstances, that it would be unwise and unjust to proscribe them by statute with inflexible and penal sanctions which would limit public service to the very wealthy or the very poor. For matters of such complexity and close distinctions, the legislature finds that a code of ethics is desirable to set forth for the guidance of state officers and employees the general standards of conduct to be reasonably expected of them.

In this spirit, the New York State Commission on Ethics and Lobbying in Government provides the following internal code of conduct to assist its members in conforming to the highest possible standards of public service to the people of the state of New York; and to guide Commission members in the performance of their official duties.

CONFLICTS OF INTEREST

The responsibilities of the Commission can only be fulfilled if its activities are undertaken in accordance with the requirements and spirit of Public Officers Law §§ 73(3)(b), 73-a, and 74.

No member may directly, indirectly, or through another appear or render services in relation to any matter before the Commission.

No member may directly, indirectly, or through another appear or render services against the interest of the Commission in relation to any case, proceeding, application, or matter before any adjudicative body.

No member may be in any way or manner interested, directly or indirectly, in any contract made by the Commission.

As provided by Public Officers Law § 74(2), no member may have any interest, financial or otherwise, direct or indirect, or engage in any outside activity which is in substantial conflict with the proper discharge of their duties as a Commission member.

No member may, without prior authorization by the Commission, directly or indirectly communicate outside the presence of the full Commission with the public official who appointed them to the Commission with respect to any matter that is or reasonably may come before the Commission. Any

such inadvertent communication between a member and their appointing authority, and the nature of such communication, must be promptly disclosed by that member to the Commission in writing.

No member may, without prior authorization by the Commission, directly or indirectly communicate outside the presence of the full Commission with any person who has any interest, direct or indirect, in the operations of the Commission or in any matter that is or reasonably may come before the Commission or that may reasonably impact a Commission-related matter. The fact and nature of any inadvertent communication by a member that contravenes the prohibition stated in this paragraph must be promptly disclosed by the member to the Commission in writing.

RECUSAL

Members should recuse themselves from Commission deliberations and votes on matters relating to any organization, entity, or individual where their impartiality in the deliberation or vote might be reasonably questioned.

Members should review for potential conflicts, on an ongoing basis, their employment and other associations and relationships, abide by the Commission's recusal policy and procedures and seek guidance in accordance with those procedures when necessary and appropriate.

Situations where recusal may be required:

A member should disclose and recuse themselves from an official matter that involves any private sector individual, association, corporation, or other entity that employed or did business with the member within two years prior to the member's appointment. This recusal remains in effect for two years after the commencement of the member's service on the Commission.

A member should disclose and recuse themselves from an official matter if they had any involvement in that matter prior to commencement of their Commission service.

Recusal should occur when:

There exists any financial or personal interest, direct or indirect, that is incompatible with the discharge of the member's duties or might reasonably be expected to impair a member's objectivity and independence of judgment in the exercise of their official duties.

A financial or personal interest includes, but is not limited to:

- Employment
- A debtor/creditor relationship
- A fiduciary relationship

- A source of income
- A matter pertaining to a known relative (i.e., a spouse, domestic partner or person who is a direct descendant of the individual's grandparents or the spouse of such descendant)
- A matter pertaining to a business investment or contractual relationship
- 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
- A past or present leadership role or other substantial role in a professional, trade, charitable, or not-for-profit organization

An incompatible financial or personal interest may exist in other situations that are not precisely within one or more of the categories provided above, depending on the totality of the circumstances. A member is encouraged to contact the Commission's Executive Director or General Counsel for guidance.

Recusal may be required in other situations even in the absence of financial or personal interests depending on the totality of the circumstances.

In accordance with Executive Law § 94(4)(e), a member shall refrain from making or soliciting from other persons, any contributions to candidates 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.

A member's nomination to office by a statewide elected official or legislative leader does not, absent other factors (*e.g.*, the existence of a personal relationship between the member and elected official that could affect the judgment of the member), constitute grounds for recusal from a matter before the Commission involving such elected official.

Procedure for Recusal

In the normal course of Commission operations, a matter may require review by the Commission for consideration, guidance, and possible action. All reasonable efforts will be made to apprise members of the identity of all persons who may be the subject of their consideration or action, in advance of such discussion to afford an opportunity for appropriate recusal.

With respect to investigation and enforcement matters, as provided in Executive Law §94(10)(b), upon notice of a complaint, referral, or the commencement of an investigation, members shall disclose to the Commission any personal, professional, financial, or other direct or indirect relationships they may have or have had with a complainant or respondent. If any member determines a conflict of interest may exist, that member shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The member may recuse themselves from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the member does not recuse themselves from the matter, the Commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, will remove the

conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for the decision is clearly stated in the determination of the commission.

With respect to all other matters, to the extent practicable, Commission staff will undertake to list all persons or entities that will have matters before the Commission at its upcoming meeting whom members have previously identified as potentially raising questions of conflict of interest for them.

The fact of a member's recusal on a matter before the Commission, and the reason for such recusal, will be subject to public disclosure by the Commission but should not compromise or jeopardize the rights of any party related to the reason for recusal nor any rights, duties, or privileges of the member or any party in interest and will be subject to any applicable confidentiality requirements or restrictions.

Additionally:

- Members should review their pre-meeting agenda and package and identify any party who may raise a question of a conflict of interest (as defined in the Commission Code of Conduct).
- Members who recognize a conflict should notify staff of their intent to recuse themselves from any matter where they believe a conflict may exist and state their intent to seek recusal from such matter.
- Members may request General Counsel to review what they believe may be a conflict and request an opinion from General Counsel or other designee as to such possible conflict. Such opinion may be advisory in nature.
- Such requests for an opinion and the opinion itself shall be deemed confidential.
- Thereafter, the member shall determine if they should seek a recusal. The opinion of General Counsel is not binding upon the requesting party and is only advisory. The final decision on any recusal is the member's alone, except for investigation and enforcement matters, with respect to which the Commission may, as provided above and in Executive Law §94(10)(b), by majority vote finding that disclosed information creates a substantial conflict of interest, remove a conflicted commissioner from involvement in the consideration and determination of a matter.
- It is possible that matters may be added to the Commission Meeting Agenda before notice can be communicated to members. These additions may be the basis for a member to recuse. Staff shall be available to advise as to such possible recusal, if

requested. However, the final decision on any recusal is the member's responsibility, except for investigation and enforcement matters, with respect to which the Commission may, as provided above and in Executive Law §94(10)(b), by majority vote finding that disclosed information creates a substantial conflict of interest, remove a conflicted commissioner from involvement in the consideration and determination of a matter.

- If a member chooses to recuse themselves, they shall so inform the Commission before the meeting or as soon as practicable. The reason for such recusal should be given but should not compromise or jeopardize the rights of any party related to the reason for recusal nor any rights, duties, or privileges of the member or any party in interest.

If a member recuses themselves from a matter, they will:

- Remove themselves from that segment of the Commission meeting wherein the matter is to be discussed and avoid discussion of the matter with other members.
- Receive no further information from the Commission or Commission staff regarding the matter.
- Receive copies of minutes of the meeting containing deletions so as not to disclose the matter to the member, except for those Commission matters that are part of any public proceeding or meeting of the Commission.

ABSTENTION

Abstaining from a vote should occur when:

A member believes they have insufficient information upon which to base a vote to act in an official way. In that instance, a member shall be allowed to abstain from a vote after fully disclosing to the Commission that such member is without enough specific information on which to base a decision or determination. In all other circumstance, a member should refrain from abstaining from voting on a question properly put before the Commission, since each member has a duty to express their opinion on a question by casting a vote.

It is possible that matters may be added to the Commission Meeting Agenda before notice can be communicated to members. These additions may be the basis for a member to abstain. Staff shall be available to advise as to such possible abstention, if requested. However, the final decision on any abstention is the member's responsibility.

In any instance in which a member abstains from voting on a question properly put before the Commission, that abstention shall be final and recorded with the yeas and nays on the vote, together with the reason for the member's abstention.

GIFTS AND SPECIAL TREATMENT

Consistent with Public Officers Law § 73(5)(a), no member should, 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.

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.

CONFIDENTIAL INFORMATION

Members should always make efforts 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(7), (10) and (11). Members who intentionally and without authorization release confidential information shall be guilty of a class A misdemeanor. In addition, violations of Public Officers Law §§ 74(3)(b) and (c) regarding disclosure of confidential information shall be subject to a civil penalty in an amount not to exceed \$10,000 plus the value of any gift or benefit received as a result of such violation.

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.

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.

AMENDMENT OF GUIDELINES

The Commission may amend this Code of Conduct from time to time.