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UNIFORM ETHICS CODE

FOREWORD

Pursuant to *N.J.S.A.* 52:13D-23, the State Ethics Commission has adopted this Uniform Ethics Code to govern and guide the conduct of State officers and employees and special State officers and employees in State agencies in the Executive branch of State Government.

The Uniform Ethics Code shall be the primary code of ethics for State agencies. It shall be supplemented by an agency code of ethics formulated with respect to the particular needs and problems of the agency to which said code is to apply. Each agency, in consultation with the Attorney General's Office, must review its enabling legislation to ensure that any agency-specific conflicts provisions are included in any supplemental agency code. An agency code must be approved by the Commission.

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I. DEFINITIONS

As used in this Uniform Ethics Code, and unless a different meaning clearly appears from the context, the following terms shall have the following meanings.

"Commission" means the State Ethics Commission, established in but not of the Department of Law and Public Safety pursuant to *N.J.S.A.* 52:13D-21.

"Conflicts Law" means the New Jersey Conflicts of Interest Law, *N.J.S.A.* 52:13D-12 et seq.

"Ethics Liaison Officer" means the individual(s) designated by the agency head to assist the State Ethics Commission in implementing and enforcing the Conflicts Law and related ethics codes.

"Event" means a meeting, conference, seminar, speaking engagement, symposium, training course, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from the State official's work location, is sponsored or co-sponsored by a supplier or a non-State government source and the invitation for which is extended to the State official because of his or her official position.

"Gift" means any fee, commission, service, compensation, gratuity, or other thing of value of any kind. If an item has more than a nominal monetary value, it will be characterized as a gift. A gift includes admission to an event for which a member of the general public would be charged, a meal, transportation, or offer of employment.

"Head of a State agency" means, in the case of the Executive branch of government, except with respect to interstate agencies, the department head or, if the agency is not assigned to a department, the Governor.

"Immediate Family Member" means an individual's spouse, child, parent or sibling residing in the same household. *N.J.S.A.* 52:13D-13(i).

"Interest" means (1) the ownership or control of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for profit other than a professional service corporation organized under the "Professional Service Corporation Act," P.L. 1969, c. 232 (C. 14A:17-1 et seq.); or (2) the ownership or control of more than 1% of the profits of a firm, association, or partnership, or more than 1% of the stock in any corporation, which is the holder of, or an applicant for, a casino license or in any holding or intermediary company with respect thereto, as defined by the "Casino Control Act," P.L. 1977, c. 110 (C. 5:12-1 et seq.). The provisions of this act governing the conduct of individuals are applicable to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their shareholder interest in such a corporation.

"Interested party" means: 1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority

of the State official's agency; 2. Any supplier, or employee, representative or agent thereof; 3. Any organization that advocates or represents the positions of its members to the State official's agency; or 4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

"Person" means any natural person, association or corporation.

"Published work" means any tangible medium of expression, including, but not limited to, literary, pictorial, graphic and sculptural matter; sound recordings; and software. *N.J.A.C.* 19:61-6.2.

"Relative," as used in section XIII, means an individual's spouse, and the individual's or his/her spouse's parent, child, sibling, 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 individual or the individual's spouse by blood, marriage or adoption.

"Special State officer or employee" means (1) any person holding an office or employment in a State agency, excluding an interstate agency, for which office or employment no compensation is authorized or provided by law, or no compensation other than a sum in reimbursement of expenses, whether payable per diem or per annum, is authorized or provided by law; (2) any person, not a member of the Legislature, holding a part-time elective or appointive office or employment in a State agency, excluding an interstate agency, or (3) any person appointed as a New Jersey member to an interstate agency the duties of which membership are not full-time.

"State agency" means any of the principal departments in the Executive branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

"State officer or employee" means any person, other than a special State officer or employee (1) holding an office or employment in a State agency, excluding an interstate agency, other than a member of the Legislature or (2) appointed as a New Jersey member to an interstate agency.

"Supplier" means any person that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to the State officer or employee's or special State officer or employee's agency, including, but not limited to, consultants, vendors and lessors.

"Unclassified office or position" means any office or position in the unclassified service of the civil service of the Executive branch of State government.

II. GENERAL STANDARDS OF CONDUCT

It is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among the public that such trust is being violated. Accordingly, State officers and employees and special State officers and employees shall conform their conduct to the following standards.

1. No State officer or employee or special State officer or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his/her duties in the public interest.

2. No State officer or employee or special State officer or employee should engage in any particular business, profession, trade or occupation which is subject to licensing or regulation by a specific agency of State Government without promptly filing notice of such activity with the Commission.

3. No State officer or employee or special State officer or employee should act in his/her official capacity in any matter wherein he/she has a direct or indirect personal financial interest that might reasonably be expected to impair his/her objectivity or independence of judgment.

4. No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his/her acts that he/she may be engaged in conduct violative of his trust as a State officer or employee or special State officer or employee.

Misuse of Official Position or Information

5. No State officer or employee or special State officer or employee should use or attempt to use his/her official position to secure unwarranted privileges or advantage for him/herself or others.

6. No State officer or employee or special State officer or employee, shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public which he/she receives or acquires in the course of and by reason of his/her official duties. No State officer or employee or special State officer or employee shall use for the purpose of pecuniary gain, whether directly or indirectly, any information not generally available to members of the public which he/she receives or acquires in the course of and by reason of his/her official duties.

Representation/Appearance Before a State Agency

7. No State officer or employee, nor any partnership, firm or corporation in which he/she has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding,

application or other matter pending before any State agency. Nothing contained herein shall be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf.

8. No special State officer or employee, nor any partnership, firm or corporation in which he/she has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before the particular office, bureau, board, council, commission, authority, agency, fund or system in which such special State officer or employee holds office or employment.

   Nothing contained in this section shall be deemed to prohibit any State officer or employee or special State officer or employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any proceeding:

   i. Pending before any court of record of this State,
   ii. In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation),
   iii. In connection with the determination or review of transfer inheritance or estate taxes,
   iv. In connection with the filing of corporate or other documents in the office of the Secretary of State,
   v. Before the Division on Civil Rights or any successor thereof,
   vi. Before the New Jersey State Board of Mediation or any successor thereof,
   vii. Before the New Jersey Public Employment Relations Commission or any successor thereof,
   viii. Before the Unsatisfied Claim and Judgment Fund Board or any successor thereof solely for the purpose of filing a notice of intention pursuant to P.L.1952, c.174, s.5 (C.39:6-65),or
   ix. Before any State agency on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

III. ACCEPTANCE OF GIFTS

No State officer or employee or special State officer or employee shall accept any gift, favor, service or other thing of value related in any way to the State official's public duties.

Upon the recommendation of the Special Counsel for Ethics Review and Compliance, the Commission has adopted a zero tolerance policy for acceptance of gifts. (See *Report of the Special Ethics Counsel to the Governor of the State of New Jersey*, dated March 14, 2005.) Accordingly, any gift that is offered to or received by a State officer or employee or special State officer or employee or, his/her spouse, immediate family member, partner or associate shall be immediately reported to the agency's Ethics Liaison Officer ("ELO"). Unless the State officer or employee or special State officer or employee is permitted to receive the gift or thing of value in

accordance with the Commission's rules on attendance at events (see section IV), no State officer or employee or special State officer or employee or, his/her spouse, immediate family member, partner or associate shall accept, either directly or indirectly, any gift, favor, service or other thing of value related in any way to the State official's public duties.

The exceptions to the zero tolerance rules for acceptance of gifts are set forth below.

1. 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 may be retained by the recipient or the recipient's department for general use if such use does not create an impression of a conflict of interest or a violation of the public trust. The receipt of such complimentary articles is not required to be reported to the ELO.

2. A State officer or employee or special State officer or employee may receive a gift, favor, service or other thing of value from a vendor under the same terms and conditions as are offered or made available to members of the general public.

3. A State employee is permitted to give or receive a gift from a co-worker, a supervisor or a subordinate. The gift should not be excessive or inappropriate for a business environment. Such gift shall not be reported to the ELO.

4. In accordance with *N.J.S.A.* 52:13D-24, gift provisions do not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

The procedures for reporting receipt of a gift are set forth in Appendix A.

IV. ATTENDANCE AT EVENTS

Attendance at an event that is sponsored or co-sponsored by an entity other than the State must be approved by the agency's ELO.

A State employee must complete the form identified as "Request For Approval For Attendance At Event," prior to attendance.

A State employee shall not attend an event in his or her official capacity unless a legitimate State purpose will be served.

Costs associated with attendance at an event shall be paid or reimbursed in accordance with *N.J.S.A.* 52:13D-24 and *N.J.A.C.* 19:61-6.1 et seq.

A State employee is prohibited from accepting honoraria in connection with his/her attendance or participation at an event. *N.J.S.A.* 52:13D-24.

A State employee is prohibited from accepting entertainment, or reimbursement for entertainment, that is collateral to an event, such as a golf outing, tickets to a sporting event or a meal taken other than in a group setting with all attendees present.

The Commission's rules on attendance at an event and the form that must be completed prior to attendance at an event are set forth in Appendix B.

V. POLITICAL ACTIVITY

Upon giving notice to the agency ELO, a State employee may be involved in political activities unless:

1. the State employee is prohibited from such activities by State or federal statute or agency rule; or

2. the political activity conflicts with the employee's official duties.

Pursuant to *N.J.S.A.* 52:13D-14 and *N.J.S.A.* 52:13D-24, a State employee may accept a contribution to the campaign of an announced candidate for elective public office provided the contribution is not known to be given in lieu of a payment that is prohibited by the Conflicts Law. Further, a State employee is subject to the Department of Personnel's Administrative Code provisions governing political activity, *N.J.A.C.* 4A:10-1.2. Note that a State employee is not permitted to serve as a campaign treasurer on any campaign that is subject to the jurisdiction of the Election Law Enforcement Commission.

The Commission's Guidelines on Political Activities and the provisions of *N.J.A.C.* 4A:10-1.2 are set forth in Appendix C.

VI. OUTSIDE ACTIVITIES AND BUSINESS INTERESTS

No State officer or employee or special State officer or employee should undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his/her objectivity and independence of judgment in the exercise of his/her official duties.

A State officer or employee's participation in any service, activity or employment that is outside his/her official State duties may be prohibited by the Conflicts Law, other State or Federal law or regulation, or the code of ethics adopted by the employee's agency. Accordingly, a State officer or employee shall obtain the approval of the ELO prior to engaging in any of the following outside activities.

1. Commencement of any business, trade, profession or other compensated employment, including the acceptance of compensation for a speech or published work;

2. Uncompensated or volunteer work for or with any entity; or

3. Holding office or title in the governing or advisory board of any entity.

Notwithstanding the requirement to disclose outside employment and activities, a State agency may exempt disclosure of specific kinds of outside employment or activities if the agency is satisfied that such activity or employment does not present a conflict of interest.

A State officer or employee is not permitted to hold employment with, hold an interest in, or represent, appear for, or negotiate on behalf of a holder of or applicant for a casino license unless the Commission grants a waiver. A waiver is granted in circumstances where it is determined by the Commission that such casino activity will not interfere with the responsibilities of the State officer or employee and will not create a conflict of interest or the appearance of such conflict. A special State officer or employee is prohibited from holding an interest in or representing, appearing for or negotiating on behalf of a holder of or applicant for a casino license, or any holding or intermediary company with respect thereto, in connection with any matter. However, a special State officer or employee without responsibility for matters affecting casino activity may hold employment with a casino license holder or applicant and, if so employed, may hold an interest in or represent, appear for or negotiate on behalf of his/her casino employer. *N.J.S.A.* 52:13D-17.2(b).

All State officers and employees shall complete the Outside Activity Questionnaire attached to this document as Appendix D, in accordance with the procedures adopted by his/her agency. These procedures shall, at a minimum, require that each current employee complete the questionnaire and that each new employee complete the questionnaire upon commencement of employment with the agency. The procedures shall also require that a State officer or employee amend his/her Outside Activity Questionnaire whenever there is a change in the employee's outside activity or State employment. A State agency shall require disclosure of additional information regarding the outside activities of its employees as necessary to address the particular needs and problems of the agency.

The agency ELO shall review all outside activity questionnaires and determine whether the outside activity is permissible in accordance with the Conflicts Law, the Uniform Ethics Code, the agency code of ethics or any other authority. A State officer or employee may appeal an agency ELO's decision to disapprove an outside activity. Such appeal shall be submitted in writing to the Commission within 60 days of the employee's receipt of the agency's decision. The appeal shall cite the relevant section(s) of the Conflicts Law, Uniform Ethics Code, agency code of ethics or other authority which supports the position of the employee that such outside activity should be permitted.

Each State agency shall develop a Conflict of Interest questionnaire for special State officers and employees of that agency. Each State agency shall develop a process for the review and retention of both Outside Activity Questionnaires and Conflict of Interest Questionnaires.

The Commission's Guidelines Governing Outside Activities are set forth in Appendix E.

Blind Trusts

A blind trust may be used by a State officer or employee, a special State officer or employee, his/her spouse or domestic partner or dependent children to avoid conflicts situations caused by financial interests. The trust must conform to the standards set forth in the Blind Trust Guidelines, Appendix F.

VII. OFFICIAL STATIONERY

Official stationery shall be used only in connection with the State agency's official business. The limitations on use of official stationery also apply to personal stationery paid for by an officer or employee if it is imprinted with the agency office or the title of the State officer or employee.

A State officer or employee or special State officer may not use official stationery to promote a candidate for elective office, endorse a State vendor or contractor, express a personal opinion on a matter that is not related to his/her official duties, or to promote his/her financial or other self-interest.

Exceptions: A State officer or employee or special State officer or employee may use official stationery to write a letter of recommendation for, or respond to an inquiry about, a current or former colleague or employee. These permissible uses are only acceptable so long as the use of official stationery does not create an impression that the State officer or employee is engaged in an unwarranted use of his/her position. For example, it would not be appropriate for a State employee to recommend an individual for inclusion in a program over which the State employee has supervisory or regulatory authority. In addition, there must be a reasonable connection between the officer's or employee's official duties and the use and purpose of the letter.

A State agency may not use official stationery to solicit a contribution from any interested party. Solicitation of any other entity must be reviewed and approved by the agency's ELO.

The Commission's Guidelines with respect to the use of official stationery are set forth in Appendix G.

VIII. POST-EMPLOYMENT RESTRICTIONS

Seeking Future Employment

State officers or employees who have direct and substantial contact with any interested parties must refrain from circulating resumes or in any manner seeking employment with those individuals or entities while still in State service. If an employee is solicited for potential employment by an entity with which he/she has direct and substantial contact, that solicitation must be disclosed immediately to the employee's management and to the agency's ELO. Employees who do not have direct and substantial contact with interested parties may circulate resumes and enter into discussions regarding potential employment with those individuals or entities so long as they avoid any situations that may give rise to an unwarranted advantage. All employees are cautioned that discussions, interviews, and negotiations shall not take place on State time.

Lifetime Ban

At no time subsequent to the termination of his/her office or employment in any State agency may a former State officer or employee or special State officer or employee represent, appear for, negotiate on behalf of, or provide information or services not generally available to members of the public, or agree to perform any of those activities, for any party other than the State in connection with a specific cause, proceeding, application or matter with which the State officer or employee or special State officer or employee had been substantially and directly involved at any time during the course of his/her office or employment. *N.J.S.A.* 52:13D-17. This lifetime ban applies not only to the State officer or employee or special State officer or employee personally, but also to the partnership, firm or corporation under the following circumstances: (1) if the former State officer or employee or special State officer or employee is a shareholder, associate or professional employee of a firm organized as a professional service corporation or (2) if the former State officer or employee or special State officer or employee owns or controls more than 10% of the stock of a corporation or more than 10% of the profits or assets of a firm, association or partnership.

One-Year Ban – Certain State Officials

In accordance with the recommendation of the Special Counsel for Ethics Review and Compliance, a one-year ban on the activities described in this section shall apply to any head, deputy head or assistant head of any principal department, board, commission or authority, the Superintendent of State Police, the Governor's Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel, Director of Communications, Policy Counselor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor.

For one year after the termination of the State office or employment of any of the individuals noted above, he/she shall not represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of any person or party other than the State with or before any officer or employee of the State agency in which he/she served. The provisions of this subsection shall not apply to any partnership, firm or corporation in which he/she has an interest or is employed, or to any partner, officer, director or employee of such partnership, firm or corporation. Nothing contained in this section shall prohibit a State agency from contracting with a former State officer or employee to act on behalf of the State.

In addition, the governor and each head of a principal department in the Executive branch are prohibited, for one year after the termination of office or employment, from registering as a "governmental affairs agent," as that term is defined in *N.J.S.A.* 52:13C-20. *N.J.S.A.* 52:13C-21.4.

Two-Year Casino Employment Restriction

N.J.S.A. 52:13D-17.2 sets forth post-employment restrictions applicable to State officers or employees subject to financial disclosure by law or executive order, and State officers or employees or special State officers or employees with responsibility for matters affecting casino activities.

Such persons, and members of their immediate families, are prohibited from holding, directly or indirectly, an interest in, or holding employment with, a casino licensee or applicant for a casino license for a period of two years following the termination of their State employment. In addition, such persons may not represent, appear for, or negotiate on behalf of a casino.

If such person or a member of the person's immediate family is employed by a partnership, firm or corporation providing professional services to a casino licensee or applicant or holding or intermediary company of the licensee or applicant, the entity may engage in casino-related matters but the person or a member of the person's immediate family must be screened from these matters for a period of two years following the termination of the person's State employment.

If such person holds an equity interest in such entity, or is the former Governor, Lieutenant Governor, or Attorney General or a member of the immediate family of one of these individuals, then the entity is also prohibited from representing, appearing for, or negotiating on behalf of a casino licensee or applicant.

Waivers

In accordance with *N.J.S.A.* 52:13D-17.2, the Commission may grant an exception from the above casino employment restrictions for a person's immediate family member or an employee who was terminated as a result of a reduction in force, (provided that the employee did not hold a policy-making management position during the five years prior to termination of employment) whenever it determines that such waiver will not create a conflict of interest or the appearance of a conflict of interest.

The Commission's Guidelines with respect to Post-Employment Restrictions are set forth in Appendix H.

IX. RECUSAL ON OFFICIAL MATTERS

A State officer or employee or special State officer or employee is required to recuse him/herself on an official matter that involves any private sector individual, association, corporation or other entity that employed or did business with the State officer or employee or special State officer or employee during the one year prior to the employee's commencement of State service.

A State officer or employee or special State officer or employee is required to recuse him/herself on an official matter if he/she had any involvement in that matter, other than on behalf of the State, prior to commencement of his/her State service.

A State official is required to recuse himself or herself from an official matter that involves any individual, association, corporation or other entity from which the State official received a campaign contribution, individually or in the aggregate, in an amount required to be reported by *N.J.A.C.* 19:25-10. Recusal is required regardless of whether the State official is

elected to the office or position associated with the campaign contribution. The recusal shall remain in effect until the expiration of the term of office which the State official was seeking when the contribution was made.

A State officer or employee or special State officer or employee is required to recuse him/herself on an official matter if he/she has a financial or personal interest that is incompatible with the proper discharge of his/her public duties.

An incompatible personal or financial 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/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/she may be engaged in conduct violative of his/her trust as a State official.

Upon determining that a State official shall recuse him/herself on any matter, the State official shall execute the recusal in writing, and shall have no involvement with the subject matter of the recusal. If a State official cannot determine whether he/she should execute a letter of recusal in any matter, the State official shall contact his/her agency ELO or the Commission for guidance. A State official shall seek the advice of the State agency's counsel, agency ELO or the Commission as to the propriety of participation in a matter if any person requests that a State official recuse him/herself from that matter. Oral advice, followed up by a writing, shall be provided by the agency's counsel, the agency ELO or the Commission to avoid delay. Oral advice shall subsequently be memorialized by a writing or by inclusion in public minutes.

The Commission's regulations governing recusal, *N.J.A.C* 19:61-7.1 et seq., which include the required elements for a written recusal, are set forth in Appendix I.

X. CONTRACTS

With few exceptions, a State employee may not enter into a contractual agreement with the State.

An agency head, deputy head or assistant head is prohibited from engaging in any private business transactions with any employee in his/her agency.

Limitation on contracting by State officer or employee

Pursuant to *N.J.S.A.* 52:13D-19, no State officer or employee shall knowingly undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of $25.00 or more, made, entered into, awarded or granted by any State agency. The exceptions to this prohibition are set forth below. As used in this section, State officer or employee also includes his or her partners, any other person for the use or benefit of the State employee or on his or her

account or any corporation which he/she controls or in which he/she owns or controls more than 1% of the stock.

Limitation on contracting by special State officer or employee

Pursuant to *N.J.S.A.* 52:13D-19, no special State officer or employee who has duties or responsibilities in connection with the purchase or acquisition of property or services by the State agency where he/she is employed or an officer shall knowingly undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of $25.00 or more, made, entered into, awarded or granted by that State agency. The exceptions to this prohibition are set forth below. As used in this paragraph, special State officer or employee also includes his/her partners, any other person for the use or benefit of the special State employee or on his/her account or any corporation which he/she controls or in which he/she owns or controls more than 1% of the stock.

The restrictions contained above shall apply to the contracts of interstate agencies to the extent consistent with law only if the contract, agreement, sale or purchase is undertaken or executed by a New Jersey member to that agency or by his/her partners or a corporation in which he/she owns or controls more than 1% of the stock.

Permissible Contracts with the State

(1) With the prior approval of the Commission, a State officer or employee or special State officer or employee is permitted to enter into the following:

(a) purchases, contracts, agreements or sales which are made or let after public notice and competitive bidding or which, in accordance with public bidding laws or regulations applicable to other State agencies, may be made, negotiated or awarded without public advertising for bids, or

(b) any contract of insurance entered into by the Director of the Division of Purchase and Property pursuant to *N.J.S.A.* 52:27B-62.

(2) A State officer or employee or a special State officer or employee or his partners or any corporation or firm in which he/she owns or controls more than 1% of the stock, assets or profits may enter into a contract or agreement with a State agency where the contract or agreement is for the development of scientific or technological discoveries or innovations in which the State agency has a property right, if the State agency has a procedure in its code of ethics for authorizing these contracts or agreements that minimizes actual conflicts of interest, and the code of ethics was approved in accordance with *N.J.S.A.* 52:13D-23, and the contract or agreement complies with that code procedure.

(3) A State officer or employee or a special State officer or employee or his/her partners or any corporation or firm in which he/she owns or controls more than 1% of the stock, assets or profits may enter into a rental agreement with a State agency which operates a facility which rents space or provides services to assist small businesses which employ 50 people or less, pursuant to the same terms and conditions as those offered to members of the public generally.

Please note that the Commission has never approved a request by a State officer or employee, or special State officer or employee, to enter into a contract with his/her own agency.

The Commission's Guidelines on Privatization, set forth in Appendix J, are applicable to a State employee's participation in an open competitive bid process for the privatization of services currently being provided by his/her agency.

XI. RETIREMENT GIFTS

A gift can be given to a State employee upon his/her retirement from State service. There are specific limits to the value of a permissible retirement gift. A State employee shall refer to Appendix K for the provisions governing retirement gifts.

XII. COMPENSATION FOR PUBLISHED WORKS

A State officer or employee or special State officer or employee may not solicit, receive, or agree to receive, compensation from sources other than the State for published work(s) created as part of his/her official duties on State time and/or using State resources.

However, a State officer or employee or special State officer or employee, other than a "designated State officer," (the Governor, cabinet-level officers and other principal administrative officers of the State) may, in connection with any service, advice, assistance, appearance, speech or other matter related to his/her official duties, receive or agree to receive, whether directly or indirectly, from sources other than the State, reasonable fees for published works on matters within his/her official duties not created on State time and/or using State resources.

In addition, a State officer or employee or special State officer or employee may accept compensation from sources other than the State for published work(s) on matters unrelated to his/her official duties created on his/her own time and with non-State resources.

Before agreeing to accept or accepting any compensation from a source other than the State for any published work, a State officer or employee or special State officer or employee must secure his/her State agency's approval to do so.

In determining whether to grant such approval, the State agency shall consider, among other things, whether the compensation is offered by an interested party, and whether the published work uses or discloses information not generally available to the public. The determination shall be consistent with applicable law and agency policy.

No State officer or employee or special State officer or employee may use his/her official title in soliciting compensation for a published work.

The Commission's Guidelines with respect to Published Works are set forth in Appendix L.

XIII. FAMILY MEMBERS - CONFLICTS OF INTEREST

1. No relative of the Governor may be employed in any unclassified office or position within the State.

2. No relative of a commissioner or department head may be employed in any unclassified office or position within the department over which the department head exercises authority.

3. A relative of an assistant or deputy department head may be employed in an unclassified office or position within the department in which the assistant or deputy serves, provided that he/she is not assigned to a position over which the assistant or deputy department head exercises authority.

4. A relative of a head or assistant head of a division within a department may be employed in an unclassified office or position within the department in which the division head or assistant division head serves, provided that he/she is not assigned to a position over which the assistant or deputy department head exercises authority.

5. A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State may not be employed in any office or position in that entity.

6. A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency may not be employed in an office or position in that bi-state or multi-state agency, unless otherwise permitted by law.

7. No State officer or employee or special State officer or employee may supervise his/her relative, or exercise any authority with regard to personnel actions involving his/her relative

8. Each State agency shall require State officers and employees and special State officers and employees to disclose information sufficient for the agency to determine whether the employment of any individual within the agency is prohibited.

Cohabitation

The Commission has determined that the prohibition regarding personnel actions and the supervision of family members, set forth in paragraph 7 above, is 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.

Dating Relationship

In the case of individuals involved in dating relationships, the Commission has found violations of the Conflicts Law in situations where the State employee had official involvement in a matter affecting the individual with whom he/she had a dating relationship. Accordingly, a State officer or employee or special State officer or employee shall not have any involvement in his/her official capacity in any matter that pertains to or involves an individual with whom he/she has a dating relationship.

The Commission's guidelines with respect to "Official Interactions with Family Members/Cohabitants and Dating Relationships" is attached hereto as Exhibit M.

XIV. CASINO-RELATED FAMILY MEMBER RESTRICTIONS

Concurrent Employment Restriction

An immediate family member of a State officer or employee, or of any "person," as defined at *N.J.S.A.* 52:13D-17.2(a), may not hold directly or indirectly, an interest in, hold employment with, or represent, appear for, or negotiate on behalf of a holder of, or applicant for, a casino license, or any holding or intermediate company with respect thereto.

However, an immediate family member of a State officer or employee or "person" may be employed by a casino in circumstances where it is determined by the Commission that 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 the appearance of such conflict. *N.J.S.A.* 52:13D-17.2(b).

Post-Employment Restriction

An immediate family member of a "person," as defined at *N.J.S.A.* 52:13D-17.2(a), may not hold, directly or indirectly, 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 phase of casino development permitting, licensure, or any other matter related to casino activity, for a period of two years following the termination of the office or employment of such person.

However, an immediate family member of a "person" may be employed by a casino in circumstances where it is determined by the Commission that such employment will not interfere with the responsibilities of the "person" and will not create a conflict of interest or the appearance of such conflict. *N.J.S.A.* 52:13D-17.2(c)(1).

Casino post-employment restrictions that apply to State officials defined as "persons" are noted in section VIII.

XV. REPORTING COMPLAINTS

Allegations that a State officer or employee or special State officer or employee has violated a provision of this Uniform Code, the Conflicts Law, the Commission's rules, an agency code of ethics or any other standard within the jurisdiction of the Commission should be reported to the appropriate agency ELO or the Commission staff. Allegations should contain as much detailed information as possible and, if the complainant chooses to identify him/herself, should include contact information so that the ELO or Commission staff can obtain additional information if necessary. A complainant is not required to disclose his/her identity when reporting an alleged ethics violation.

XVI. PENALTIES

The Commission is empowered to impose the following penalties in accordance with specific provisions of the Conflicts Law. Note that violations committed by a former State officer or employee or special State officer or employee may be subject to penalties so long as the Commission's investigation of same was initiated not later than two years following termination of service.

1. *N.J.S.A.* 52:13D-17 provides that any person who willfully violates the general post-employment restrictions set forth in that provision is a disorderly person, and shall be subject to a fine not to exceed $1,000 or imprisonment not to exceed six months, or both. In addition, for violations occurring after March 15, 2006, any former State officer or employee or former special State officer or employee found by the Commission to have violated any of the provisions of this section shall be assessed a civil penalty of not less than $500 or more than $10,000.

2. *N.J.S.A.* 52:13D-17.2(h) provides that any person who willfully violates the casino-related post-employment restrictions set forth in Section 17.2 (c) is a disorderly person, and shall be subject to a fine not to exceed $1,000 or imprisonment not to exceed six months, or both. In addition, for violations of Section 17.2(c) occurring after March 15, 2006, any former State officer or employee or former special State officer or employee found to have violated any of the provisions of this section shall be assessed a civil penalty of not less than $500 or more than $10,000.

3. *N.J.S.A.* 52:13D-21(i) provides that any current or former State officer or employee or special State officer or employee found guilty by the Commission of violating any provision of the Conflicts Law, the Uniform Ethics Code, or any agency code of ethics, shall be fined not less than $500 nor more than $10,000, and may be suspended from office or employment by order of the Commission for a period not to exceed one year. In addition, for violations occurring after March 15, 2006, the State Ethics Commission may also order restitution, demotion, censure or reprimand.

This subsection further provides that if the Commission finds that the conduct of the officer or employee constitutes a willful and continuous disregard of the provisions of the Conflicts Law, the Uniform Ethics Code or any agency code of ethics, it may order that person removed from office or employment and may further bar the person from holding any public

office or employment in this State in any capacity whatsoever for a period not exceeding five years from the date on which the person was found guilty by the Commission.

This subsection further provides that the Commission may impose a penalty of $50 per day of violation for failure to file an appropriate financial disclosure statement required to be submitted to the Commission by law, regulation or executive order.

(See penalty provisions set forth at *N.J.A.C.* 19:61-3.1(j) and *N.J.A.C.* 19:61-5.6(c).)

4. *N.J.S.A.* 52:13D-23(d) provides that violations of the Uniform Ethics Code or any agency code of ethics shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. With respect to a person who is in the classified civil service, the procedure leading to such removal or discipline shall be governed by the Civil Service Act, *N.J.S.A.* 11A:1-1 et seq. and the Rules of the Department of Personnel. No action for removal or discipline shall be taken under this subsection except upon the referral or with the approval of the Commission.

5**.** *N.J.S.A.* 52:13D-26 provides that any person who willfully induces or attempts to induce a State officer or employee or special State officer or employee to violate any of the provisions of the Conflicts Law is a disorderly person, and shall be subject to a fine not to exceed $500 or imprisonment not to exceed 6 months, or both.

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APPENDIX A

GUIDELINES GOVERNING RECEIPT OF GIFTS AND FAVORS

1. Each department shall require full disclosure by employees to the office of the department head through the Ethics Liaison Officer upon receipt of a gift or any other thing of value related in any way to the State officer or employee's or special State officer or employee's public duties.

2. Each department should designate an Ethics Liaison Officer to monitor compliance with specific procedures under which officers and employees shall proceed upon receipt of a gift or any other thing of value related in any way to their public duties.

3. All officers and employees should be instructed that any gift or other thing of value offered to or by an officer or employee that is related in any way to his/her public duties must be reported and remitted immediately to the Ethics Liaison Officer. Similarly, any favor, service, employment or offer of employment from such person or corporation must be reported immediately.

4. The Ethics Liaison Officer shall return a gift or thing of value that is related in any way to an officer or employee's public duties to the donor or shall otherwise appropriately dispose of it.

5. 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 may be retained by the recipient or the recipient's department for general use 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 an employee of 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.

6. The Ethics Liaison Officer will have the responsibility of keeping the records of all such occurrences; names of the employees, individuals, and companies involved, and the final disposition of the gift or thing of value.

7. The assistance of the Director of the State Ethics Commission will be available to all Ethics Liaison Officers to aid them in individual cases.

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APPENDIX B

SUBCHAPTER 6. ATTENDANCE AT EVENTS, ACCEPTANCE OF HONORARIA, ACCEPTANCE OF COMPENSATION FOR PUBLISHED WORKS, AND ACCEPTANCE OF THINGS OF VALUE

19:61-6.1 Applicability

The rules in this subchapter apply to all State officials in the Executive branch of State government.

19:61-6.2 Definitions

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

"Allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

"Approval" means, for the purposes of N.J.A.C. 19:61-6.4 and 6.5, written permission from the department head to attend and/or participate in an event; and/or to accept direct or indirect benefits in connection with attendance.

"Department head" means the administrative or executive head of the State official's agency or his or her designee.

"Direct benefit" means acceptance by a State official from the sponsor of an event or any other person of travel, meals, accommodation, waiver of conference or event fee or any other costs associated with attending the event for which no payment is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

"Event" means a meeting, conference, seminar, speaking engagement, symposium, training course, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from the State official's work location, is sponsored or co-sponsored by a supplier or a non-State government source and the invitation for which is extended to the State official because of his or her official position.

"Indirect benefit" means acceptance by a State official from the event sponsor or any other person of reimbursement for costs of travel, meals, accommodation, event fees, or any other costs associated with attending the event for which no reimbursement is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

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"Interested party" means:

1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority of the State official's agency;

2. Any supplier, or employee, representative or agent thereof;

3. Any organization that advocates or represents the positions of its members to the State official's agency; or

4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

"Personal funds" means funds of a State official. It does not include funds that are loaned, advanced, promised or reimbursed to a State official for any purpose by an interested party.

"Published work" means any tangible medium of expression, including, but not limited to, literary, pictorial, graphic and sculptural matter; sound recordings; and software.

"Reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive.

"Supplier" means any person that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to the State official's agency, including, but not limited to, consultants, vendors and lessors.

"Thing of value" includes, but is not limited to, compensation; money; a stock, bond, note or other investment in an entity; employment, offer of employment; gift; reward; honorarium; favor; goods, service; loan; forgiveness of indebtedness; gratuity; property or real property; labor; fee; commission; contribution; rebate or discount in the price of any thing of value; an automobile or other means of personal transportation; entertainment; meal; or any other thing of value offered to or solicited or accepted by a State official in connection with his or her official position.

19:61-6.3 Granting of approval

(a) For the purposes of N.J.A.C. 19:61-6.4 and 6.5, when a department head grants approval to attend an event, the department head shall determine whether a legitimate State purpose will be served by attendance and shall consider the provisions of the Conflicts of Interest Law, the uniform ethics code and the agency code of ethics, any applicable Executive Orders, the guidelines and rules of the Commission, any departmental administrative policies and any other relevant considerations. Relevant considerations include, but are not limited to:

1. The identity of the sponsor;

2. The purpose of the event;

3. The identity of other expected participants;

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4. Whether attendance and/or participation in the event will assist the State official in carrying out his or her official duties and support the mission of the agency; and

5. The monetary value and character of the costs and benefits provided by the sponsor, including whether the costs and benefits are comparable to those offered to or purchased by other attendees.

(b) Approval shall be requested in writing on the form provided in N.J.A.C. 19:61-6.8. Such forms shall be retained by the State agency for a period of five years from the date of approval of the form.

(c) When an agency has numerous divisions or similar subunits with very diverse missions, the department head may request that the Commission permit that such divisions rather than the department State agency be treated as agencies for the purposes of this subchapter. The department head shall provide the Commission with information identifying the diversity of the missions of the divisions and justifying their separate treatment as agencies.

19:61-6.4 Attendance at an event sponsored by an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) Except as provided in (c) below:

1. The State shall pay the reasonable expenses of the State official associated with attending the event.

2. Neither the State official nor the State shall receive any direct or indirect benefit from any other source.

(c) The requirement and prohibition in (b) above need not apply if the event is designed to provide training, dissemination of information, or the exchange of ideas and the State official is making a speech, is participating in a panel at the event or is an accompanying resource person for the speaker and/or participant, subject to the reasonable approval of the department head. The direct or indirect benefit provided to the State official by the sponsor of the event may include the following:

1. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed $500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The $500.00 per trip limitation shall not apply if the reimbursement or payment is made by:

i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State;

ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or

iii. Any agency of the federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(d) If an actual conflict or the appearance of a conflict could arise under the application of (c) above, (b) above shall govern.

(e) Approvals granted under (c) above must be forwarded to the Commission for review.

(f) The State official may pay his or her own expenses with his or her personal funds.

(g) The State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

Examples:

An employee of the Department of Environmental Protection has been invited to attend a conference of the Association of Environmental Authorities and has been asked to present a short program to explain a new series of forms being proposed by the Department. The Association has offered to waive the $200.00 conference fee; the conference program includes morning and afternoon refreshments and lunch. If the Department head approves the employee's attendance and participation in the conference, the employee may accept the waiver of the fee and the refreshments and meal included in the program. A copy of the Department head's approval must be forwarded to the Commission.

The Motor Vehicle Commission (MVC) is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several MVC employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the demonstration, but because the company plans to submit a bid to provide this equipment and is therefore an interested party with respect to the MVC, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

Three employees from different units of the Department of Transportation are responsible for weekly monitoring of a construction project. Each Friday morning, they meet with the contractor's representative at the site field office to review the week's progress and to assess projected schedules. The meetings generally last one to two hours; coffee is available, but no other refreshments or meals are served or offered. Because no direct or indirect benefits are offered or provided and because the meetings are part of the employees' job responsibilities, the meetings are not "events" for the purposes of this subchapter.

19:61-6.5 Attendance at an event sponsored by an entity other than an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

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(b) The State may pay the reasonable expenses of the State official associated with attending the event or may permit the State official to accept direct or indirect benefits. Direct or indirect benefits may include the following:

1. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed $500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The $500.00 per trip limitation shall not apply if the reimbursement or payment is made by:

i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State;

ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or

iii. Any agency of the federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(c) An interested party shall not provide a direct or indirect benefit to the State official in order to facilitate his or her attendance.

(d) A State official making a speech or presentation at the event shall not accept an honorarium or fee from the sponsor.

(e) Under no circumstances shall a State official accept entertainment collateral to the event, such as a golf outing, or meals taken other than in a group setting with all attendees, or reimbursement therefore.

Examples:

An employee of the Commerce, Economic Growth and Tourism Commission has been invited, by the Mexican Tourist Bureau, an agency of the Mexican government, to 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.

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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.

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.

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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

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APPENDIX C

STATE EMPLOYEES' PARTICIPATION IN POLITICAL ACTIVITIES

Summarized below are Commission cases addressing State employees' participation in partisan political activities. The Commission permits involvement in partisan political activities provided that there is no provision in the Departmental code of ethics prohibiting such activities. (Election Law Enforcement Commission, State Ethics Commission and several other agency codes have specific provisions prohibiting such activities.) State employees, however, may not use State time or State resources in pursuit of such activities and must provide notice to the Departmental Ethics Liaison Officer.

Two sections of the Conflicts Law, *N.J.S.A.* 52:13D-14 and 24, address the acceptance and/or solicitation of campaign contributions.

Section 14 provides:

> No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

Section 24 provides:

> a. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.
> …
> c. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

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In Case No. 45-73, a member of the Commission on Legalized Games of Chance requested an opinion from the Commission as to whether the provisions of the Conflicts of Interest Law would restrict his involvement in political activities in the county where he resided. The Attorney General's Office was asked to review the request and issued an opinion which advised that the State official was permitted to engage in political activities, barring a prohibition against such activities in the Department's Code of Ethics.

In Case No. 201-75, the Commission referred a request for advice as to whether a member of a County Board of Taxation was permitted to become a candidate for and, if elected, hold an Assembly seat, to the Attorney General. Attorney General Opinion M75-2075 concluded that a member of a County Board of Taxation holds a State office of profit within the meaning of Article IV, Section V, Paragraph 4, of the New Jersey Constitution and, as such, was permitted to become a candidate for a seat in the Legislature, but, if elected, must resign as a County Board Member before taking his Legislative seat.

In Case No. 435-77, the Commission determined that a Department of Health employee was permitted to serve as chairman or co-chairman of a public employees' committee in support of a gubernatorial candidate. The State employee was cautioned that he must not use or attempt to use his official position to secure unwarranted privileges or advantages for the candidate of his choice. Further, he must be careful not to permit his political activities to conflict with the proper discharge of his duties in the public interest.

In Case No. 756-79, the Commission determined that it would not be a conflict of interest for a member of a County Board of Taxation to simultaneously serve as a Commissioner on the County Tax Board and hold the position of County Chairman of a political party in the same county.

In Case No. 972-81, the Commission determined that a Housing Finance Agency ("HFA") employee was permitted to run for municipal office in a municipality where housing projects sponsored by the HFA were located. The employee was cautioned that, if elected, she should not have any dealings with any project located in East Orange as long as she was a member of the Council.

In Case No. 987-81, the Commission affirmed the Department of Labor Ethics Committee determination that the employee's position as a Democratic State Committeeman and Member of the Warren County Democratic Committee as well as his candidacy for the Lopatcong Township Council did not constitute a violation of the Conflicts of Interest Law. The Commission also concurred with the caveats imposed by the Department prohibiting the use of State time, stationery and telephones by the employee for his political activities and further extended this prohibition to include any other State resources.

In Case No. 34-85, two members of the Board of Dentistry were advised that *N.J.S.A.* 52:13D-24 expressly permits the solicitation and acceptance of campaign contributions for announced candidates for elective public office. The dentists were cautioned, however, about political activities which directly involve persons subject to licensure and review by the Board of

Dentistry. The dentists sent letters, on personal stationery, to thousands of New Jersey licensed dentists, to solicit re-election campaign funds for a New Jersey Assemblyman.

In May 1990, the Casino Control Commission ("CCC") requested an Advisory Opinion from the Commission as to whether certain political activities, if engaged in by members of the CCC, would violate ethical restrictions contained in the Casino Control Act or the CCC's Code of Ethics. Because this request involved a statutory interpretation, the Attorney General's Office was asked to review it. An Opinion was received which stated that, given the directive in the Casino Control Act that the CCC promulgate a code of ethics modeled upon the Code of Judicial Conduct, it appeared that without a legislative change to the Casino Control Act, members of the CCC were prohibited from those political and partisan activities that are prohibited by the Code of Judicial Conduct.

In Case No. 17-95, a County Superintendent of Elections employee was advised that she was permitted to run for a council seat in a partisan political election because her responsibilities as Program Coordinator involved only student voter registration, the planning of educational programs and the handling of press releases and correspondence. The employee had no responsibilities in connection with the election process. She was advised, however, that she should have no involvement with student voter registration activities in the municipality in which she was a council candidate.

In 1997, in Case No. 29-97, the Commission considered the effect of section 16(b) of the Conflicts Law on State officers and employees who serve as campaign treasurers. Section 16(b) prohibits State officers and employees from representing, appearing for or negotiating on behalf of, or agreeing to perform any of those activities for, a party other than the State in connection with any matter pending before any State agency. The Commission's precedent has established that signing reports, making telephone calls, attending meetings and/or responding to inquiries by a State agency on behalf of a third party are acts of representation. Campaign reports must be signed by the campaign treasurer and submitted to the Election Law Enforcement Commission ("ELEC"), a State agency, and in the event of a complaint to ELEC, the treasurer would be required to appear in person or respond in writing to ELEC's inquiry. Thus, a State officer or employee is prohibited from serving as a campaign treasurer because the treasurer's duties include representing the campaign organization and/or the candidate before ELEC.

In Case No. 07-01, a County Superintendent of Elections employee was advised that his proposed participation in his friend's campaign for municipal office was not appropriate under the application of section 23(e)(5), activity which might reasonably be expected to impair objectivity and independence of judgment, and section 23(e)(7), appearance of impropriety. In his official capacity, the employee supervised a staff of 53 employees, represented the Superintendent of Elections at necessary functions, and assisted voters and interested parties by providing requested records.

The employee expected to participate in the following political activities: door-to-door campaigning, participating in phone bank work, coordinating volunteers, giving instructions on

election procedures, staffing the campaign headquarters, participating in voter registration drives, attending rallies and fundraising events, and preparing mailings to registered voters.

In prohibiting the activity, the Commission balanced the State employee's interests with the public's interest in ensuring fair and unbiased elections.

In Case No. 05-03, the Commission considered an allegation that a Department of Community Affairs ("DCA") employee violated the Political Activities Prohibition of the DCA Code of Ethics when her name and picture appeared on a campaign mailer for a local mayoral candidate. The campaign mailer prominently featured the State employee in her capacity as a former mayor. It did not mention her role with the State and did not reference any relationship between the municipality and the DCA. Section XI, Political Activities Prohibition, of the DCA Code provides as follows:

> An employee shall not directly or indirectly use or seek to use his authority or the influence of his position to control or modify the political action of another person. An employee during the hours of duty shall not engage in political activity; nor shall he at any other time participate in political activities, which would impair his usefulness in the position in which he is employed. A State employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

The Commission dismissed the allegation, noting that Section XI of the DCA Code of Ethics specifically states that a State employee retains the right to express opinions on political subjects and candidates. The State employee exercised that right when she endorsed the candidate in his election campaign.

Additional Restrictions. The Department of Personnel has issued regulations that address the political activities of State employees. These regulations, which reference the Federal Hatch Act, are not administered or enforced by the Commission and are printed here for the reader's information and convenience.

***N.J.A.C.* 4A:10-1.2 Political Activity**

a. No employee in the career or senior executive service shall directly or indirectly use or seek to use his or her position to control or affect the political action of another person or engage in political activity during working hours. See *N.J.S.A.* 11A:2-23.

b. No employee in the career, senior executive or unclassified services whose principal employment is in connection with a program financed in whole or in part by Federal funds or loans, shall engage in any of the following prohibited activities under the Hatch Act (5 U.S.C. 1501 et seq.):

C-5

1. Be a candidate for public office in a partisan election. This provision does not apply to the Governor, the mayor of a city, the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs;

2. Use official authority or influence that interferes with or affects the results of an election or a nomination for office; or

3. Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

c. The office of the Special Counsel of the United States Merit System Protection Board has responsibility for the investigation of Hatch Act matters.

***N.J.A.C.* 4A:2-5.1 General provisions**

b. An appointing authority shall not take or threaten to take any action against an employee in the career service or an employee in the senior executive service with career status based on the employee's permissible political activities or affiliations. This subchapter shall also apply to State service employees in the unclassified service who do not serve in policy-making or confidential positions.

D-1

STATE OF NEW JERSEY OUTSIDE ACTIVITY QUESTIONNAIRE

Name:

Work Address:

Department:

Division/Bureau: **Telephone Number:**

Civil Service Title: **Functional Title (if different):**

Job Duties:

1. Are you currently engaged in any business, trade, profession and/or part-time or full-time employment outside of or in addition to your State employment?

If yes, you must answer question 2. Yes No

2. Name of Outside Employer(s) or Business(es). Please indicate if you are an owner, partner or corporate officer.

Address:

Type of Business:

Describe responsibilities:

Outside Employment (please specify):

Days Worked per Week:

Hours Worked: Per Day Per Week

Is your employment or business being performed for or with any other Department employee or official?

Yes No

If yes, name of employee or official and title:

Does your outside employment or business require/cause you to have contacts with other NJ State agencies, vendors, consultants or casino license holders?

Yes No

If yes, explain.

D-2

3. Do you hold a license issued by a State agency that entitles you to engage in a particular business, profession, trade or occupation?

Yes No If yes, type of license.

When was license issued: Active Inactive

4. Do you currently hold or plan to hold outside voluntary position(s)? Yes No

If yes, explain.

5. Are you an officer in any professional, trade or business organization? Yes No

If yes, explain.

6. Are you serving in any public office, or considering appointment or election to any public office?

Yes No

What is the type of elective / appointive position?

What are your duties?

Hours engaged in elective / appointive activity:

7. Do any members of your immediate family, either through employment with or through a partnership or a corporate office, hold an interest in any firm or entity that is (a) performing any service for the State of New Jersey, (b) directly or indirectly receiving funding from the State, or (c) regulated by the State?

Yes No

Family Member's name

Nature of Employment

Duration: Permanent Temporary

8. Are any members of your immediate family employed by a New Jersey casino or an applicant for a NJ casino license?

Yes No

D-3

Family Member's Name Relationship:

Name of Casino:

I certify that this questionnaire contains no willful misstatement of fact or omission of material fact and that after it is submitted, any future activity subject to disclosure will be reported before I engage in such activity.

Signature of Employee Date

Immediate Supervisor (check one)

Approved Disapproved

Signature:

Date:

Comments and/or reason for disapproval:

Ethics Liaison Officer (check one)

Approved Disapproved

Signature:

Date:

Comments and/or reason for disapproval:

Please provide the employee with a copy of the Approved/Disapproved Form.

E-1

APPENDIX E

GUIDELINES GOVERNING OUTSIDE ACTIVITIES

These Guidelines present a comprehensive overview of decisions and policies of the State Ethics Commission concerning outside activities, both compensated and uncompensated. The Commission has addressed outside activities under the application of standards embodied in the New Jersey Conflicts of Interest Law, *N.J.S.A.* 52:13D-12 et seq.: sections 16, representation, appearance or negotiation regarding a proceeding pending before a State agency; 17.2(b), State employee/family member relationships with casino applicants or licensees; 19, contracts with State agencies; 23(e)(1), interest in substantial conflict with official duties; 23(e)(2), licensed or regulated activities; 23(e)(3), unwarranted privilege; 23(e)(5), employment or service reasonably expected to impair objectivity and independence of judgment; 23(e)(7), appearance of impropriety; 24, receipt of thing of value for service related to official duties; 25, information not generally available to the public; and *N.J.A.C.* 19:61-6.7(b), compensation for published works.

Uniform Ethics Code. Pursuant to Section VI of the Uniform Ethics Code, State officers and employees must obtain the approval of the agency Ethics Liaison Officer prior to engaging in any outside activity. An agency may find it administratively efficient to exempt disclosure of specific kinds of outside employment; for example, part-time work for businesses not related to the position of employment in the agency.

Agency Code of Ethics. Each State agency is required to promulgate a code of ethics to address the particular needs and problems of the agency. The agency code of ethics is a supplement to the Uniform Ethics Code and may prohibit certain types of outside employment.

Outside activities disapproved by a State employee's agency may be appealed to the Commission. Appeals should be directed in writing to the Executive Director, State Ethics Commission, 28 West State Street, P.O. Box 082, Trenton, NJ 08625.

Review/Approval Process. The following issues must be examined by the agency Ethics Liaison Officer in determining whether an outside activity can be approved. Does the outside position require representation before a State agency? Does the outside position involve a casino licensee or applicant for a casino license? Does the outside activity involve contracting with a State agency? Is there a significant overlap in the duties and responsibilities of the two positions? Does the State employee's agency have control, supervision, or jurisdiction over the outside entity? Does the outside entity receive grants from or contract with the State employee's agency? Does the outside activity involve a published work? Does the outside interest involve political activity? These Guidelines present summaries of past Commission cases, organized under the questions listed above. The case presentations are solely to provide examples of outside activities that have been addressed by the Commission. Also included are general explanations of the statutory provisions applicable to outside employment/volunteer activities.

E-2

Does the Outside Position Require Representation Before a State Agency? Section 16(a) of the Conflicts Law prohibits a special State officer or employee, or any partnership, firm or corporation in which he has an interest, from representing, appearing for, or negotiating on behalf of, or agreeing to perform any of the aforementioned, on behalf of any person or party other than the State in connection with any cause, proceeding, application or other matter pending before the particular agency in which such special State officer or employee holds office or employment.

Section 16(b) of the Conflicts Law prohibits a State officer or employee, or any partnership, firm or corporation in which he has an interest, from representing, appearing for, or negotiating on behalf of, or agreeing to perform any of the aforementioned, on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before *any* State agency.

"Interest" is defined in section 13(g) of the Conflicts Law as (1) the ownership or control of more than 10% of the profits or assets of a firm, association, partnership, or more than 10% of the stock in a for-profit corporation, other than a professional service corporation or (2) the ownership or control of more than 1% of the stock in any corporation which is the holder of or applicant for a casino license or in any holding or intermediary company with respect thereto. In the case of a professional service corporation, the provisions governing the conduct of individuals are applicable to shareholders, associates or professional employees regardless of the extent or amount of their shareholder interest in such corporation.

Section 16(c) sets forth exceptions to the general prohibitions of sections 16(a) and 16(b). Those exceptions include matters (1) pending before any court of record in the State, (2) in regard to a workers' compensation claim, (3) in connection with the determination or review of transfer, inheritance or estate taxes, (4) in connection with filing of corporate or other documents in the Office of the Secretary of State, (5) before the Division on Civil Rights, (6) before the State Board of Mediation, (7) before the Public Employment Relations Commission, (8) before the Unsatisfied Claim and Judgment Fund Board, (9) before any State agency on behalf of a county, municipality or school district or any authority, agency or commission thereof except where the State is an adverse party and provided the State employee does not hold office or employment in the State agency where the matter is pending.

Engineers. In Case No. 6-93, the Commission was asked to consider the extent of the section 16(b) prohibition in the case of a Department of Transportation Project Engineer. The Project Engineer requested an opinion as to whether his secondary employment performing dam inspections for private land owners and completing reports to be submitted to the Department of Environmental Protection and Energy ("DEPE") constituted representational activity prohibited by section 16(b). The Commission determined that the preparation of the dam inspection reports, attendance at meetings at the DEPE, telephone conversations with DEPE employees regarding the reports and the submission of correspondence to DEPE on behalf of clients constituted representational activity prohibited by section 16(b) of the Conflicts Law. The Commission also determined that submission of the reports by the third-party clients would not mitigate the violation.

E-3

In several cases since 1993, the Commission has found that State employees who sign documents, make telephone calls or submit correspondence in connection with matters pending before a State agency are in violation of section 16.

Tax Preparers. The Commission has addressed the issue of whether a State employee's outside employment preparing State income tax returns is violative of section 16(b) of the Conflicts Law on a number of occasions (Cases No. 619-77, 830-79, 828-79, 908-80). In these cases, the Commission permitted the State employees to continue their outside employment as tax preparers, but advised them that they had an obligation to inform clients that in the event of a dispute, the State employees could not appear before the Division of Taxation or any other State agency. In 1993, the Commission revisited the issue, determined that the preparer's signature on the State tax return does not constitute representational activity, and confirmed its earlier rulings.

Attorneys. In Case No. 48-89, a Member of the Statewide Health Coordinating Council ("SHCC") requested advice from the Commission as to the applicability of Section 16(a) of the Conflicts Law to her situation. The Member secured employment in the health care department of a New Jersey law firm and asked what effect her employment with the firm would have on the firm and its clients. The firm, a partnership, represented providers of healthcare goods and services before the Department of Health, the SHCC, and other related public bodies. The Member's status with the firm was that of employee; she had no interest in the firm as defined in section 13(g) of the Conflicts Law.

The Commission advised the Member that section 16(a) prohibited her from representing, appearing for, or negotiating on behalf of any party other than the State in connection with any matter pending before the SHCC. This prohibition did not extend to the law firm because the Member had no interest in the firm.

In Case No. 394-76, the Commission considered whether it would be a conflict of interest for a Project Specialist, Department of Health ("DOH"), to maintain a part-time law practice out of his home. In his official capacity, the employee was responsible for developing and evaluating a rate system for payment of hospital costs based on diagnostically related illness. The Commission determined that the DOH employee was permitted to engage in the outside practice of law with the understanding that he refrain from representing any person or party, including non-New Jersey governmental agencies, in any case related to rate-setting in health care facilities or other providers of medical care. This would avoid any possibility that decisions or conclusions rendered in such a case could be used to challenge the rate systems in New Jersey. The DOH employee had voluntarily agreed that he would not represent any health care facilities or other providers of medical care within the State while employed by the DOH.

In Case No. 355-76, Administrative Assistant, Child Care Licensing Section, Division of Youth and Family Services, Department of Human Services, the Commission determined that no conflict existed between the Administrative Assistant's State position and his private law practice provided that he refrain from offering services in any child, family, or licensing matters in which DYFS was involved or might be involved.

E-4

Campaign Treasurer. In Case No. 29-97, the Commission determined that, under the operation of section 16(b) of the Conflicts Law, State employees are prohibited from acting as campaign treasurers because campaign reports signed by them must be submitted to the Election Law Enforcement Commission ("ELEC"), and, in the event of a complaint to ELEC, a State employee would be required to appear in person or respond in writing to ELEC's inquiry.

Does the Outside Position Involve a Casino Licensee or Applicant for a Casino License?

State Officer or Employee. A State officer or employee, other than a State officer or employee included in the section 17.2(a) definition of "person," may hold employment with the holder of or applicant for a casino license only if the Commission grants a waiver. A waiver of the prohibition can be granted if, in the Commission's judgment, 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. Waivers may be sought by contacting the Commission.

Family Members. Members of the immediate family of a State officer or employee, or of a person, may also hold employment with the holder of or applicant for a casino license by obtaining a waiver from the Commission. An immediate family member is defined as a spouse, child, parent or sibling residing in the same household.

Does the Outside Activity Involve Contracting With a State Agency? Section 19(a) of the Conflicts Law prohibits a State officer or employee or from entering into a contract, valued at $25 or more, with any State agency. A special State officer or employee having any duties or responsibilities in connection with the purchase or acquisition of property or services by the State agency is restricted from contracting with his/her agency. This prohibition also extends to partners or any corporation which the State officer or employee or special State officer or employee controls or in which he owns or controls more than 1% of the stock.

Section 19 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 provisions; and (3) contracts of insurance entered into by the Director of the Division of Purchase and Property, Department of the Treasury, pursuant to *N.J.S.A.* 52:27(b)-62.

State employees must receive the approval of the Commission prior to contracting under any of the section 19(b) exceptions. The Commission has approved many requests over the years by State employees to bid on contracts that are subject to public notice and competitive bidding. Such requests are generally approved if the contract in question is not with the State employee's own agency. The Commission has relied on section 23(e)(7), the appearance section of the statute, in limiting a State employee's participation in the contracting process when the contract is with his/her own agency.

E-5

The Commission has also granted approval for contracts that may be awarded without public advertising and competitive bidding pursuant to *N.J.S.A.* 52:34-10, where the State employee is the sole source of supply for a particular good or service. *N.J.S.A.* 52:34-10 also exempts purchases from the federal or any State government or any agency or political subdivision thereof; public exigency; contracts where more favorable terms can be obtained from a primary source of supply; seasonal articles or wearing apparel; where commodities traded on a national commodity exchange are to be purchased and fluctuations of the market require immediate action; or the equipment to be purchased is of a technical nature and procurement without advertising is necessary in order to assure standardization of equipment and interchangeability of parts.

In Case No. 7-91, the Commission for the Blind and Visually Impaired ("CBVI") requested that the Commission approve an exception to section 19 to permit the CBVI to contract with a State employee for the development of a computer software package. The State employee was identified by the CBVI as the sole source of supply for generating this program. The Commission approved the contract, pursuant to *N.J.S.A.* 52:34-10, with the understanding that all work would be performed on the State employee's own time and without the use of State resources.

In 1992, the Commission considered whether a Department of Human Services caseworker could continue to perform psychosocial evaluations of juvenile inmates for the Department of Corrections ("DOC"), Case No. 30-92. The Commission determined that section 19 permitted dual employment by two different State agencies but did not permit personal service contracts. The Commission determined that caseworker's arrangement with the DOC was a personal service contract that did not fall within the exception of section 19(b). They noted that while it was a contract that could be awarded without public notice and competitive bidding, the authority for such an award was *N.J.S.A.* 52:34-9; section 19(b) only allows contracts which are awarded pursuant to *N.J.S.A.* 52:34-10.

In Case No. 25-94, the Commission considered whether a Statistical Engineer, Bureau of Materials Engineering, Department of Transportation, was permitted, under section 19, to provide photography services to the State Museum and other State agencies. The Commission determined that the Statistical Engineer could not contract with the State Museum to perform photography work because the contracts were not subject to public notice and competitive bidding and did not fall within the exceptions of *N.J.S.A.* 52:34-10.

In Case No. 15-99, the Commission affirmed a Department of Human Services ("DHS") decision that a DHS employee was prohibited, under section 19 of the Conflicts Law, from serving as a pool attorney for the Office of the Public Defender ("OPD"). The OPD uses the services of licensed New Jersey attorneys to handle "pool" cases, cases that have multiple defendants or cases that employees of the OPD cannot handle because of the volume or backlog of work or a conflict of interest. The DHS employee appealed to the Superior Court, Appellate Division, which upheld the Commission's decision.

E-6

Licensed or Regulated Activities. Pursuant to section 23(e)(2) of the Conflicts Law, all occupational, trade, business, or professional licenses issued by a State agency must be reported to the Commission. Such licenses include, but are not limited to, attorney, physician, nurse, pharmacist, engineer, real estate, insurance, private detective, and teacher. If the license is inactive, please so note. As is the case with any secondary employment activity, a State employee must receive the prior approval of the agency Ethics Liaison Officer prior to any outside use of a professional license.

Is There a Significant Overlap in the Duties and Responsibilities of the Two Positions? In Case No. 40-91, the Commission considered an appeal by the Director of Social Services, Office of Public Guardian ("OPG"), Department of Community Affairs ("DCA"), that her proposed pursuit of a private practice as an "Eldercare Consultant" was incompatible with her State position of Director of Social Services, OPG. The DCA Ethics Committee denied the secondary employment based on the fact that the two positions dealt with the same general area, the duties and responsibilities of the two positions were similar, and the possibility existed that there were individuals, organizations, and entities that the DCA employee might deal with in both positions. The Commission confirmed the ruling of the DCA Ethics Committee. The Commission reviewed the situation under sections 16(b), 23(e)(3), (5) and (7) of the Conflicts Law.

In Case No. 769-79, the Commission considered whether it would be a conflict of interest for the Coordinator, Government and Small Business Aids, Division of Economic Development, Department of Labor and Industry, to serve as a trustee of a local development corporation designed to help small businesses on a local level. The Commission noted that it appeared that the Coordinator would be providing on a local level the same service that he was authorized to offer in his State position. Moreover, it would not be unreasonable to expect that he would review applications for State aid submitted by the small businesses he had assisted on a local level. The Commission determined that it would be a conflict for the Coordinator to hold his present State position and concurrently serve as a trustee of the local development corporation. The Commission cited section 23(e)(5) in its determination.

In Case No. 1127-82, the Commission considered an appeal by the Assistant Chief of Vital Statistics and Registration, Department of Health ("DOH"), from a determination by the DOH that he should discontinue activities in connection with a company owned by him and a co-worker. The company sold vital records binders to municipalities for use by local registrars for the purpose of filing original vital records. In his official capacity, the State employee was responsible for assisting and instructing local registrars in a number of matters including maintenance of vital records files. His partner had even more contact with local registrars in that he was responsible for supervising and training vital statistics field personnel who provided technical assistance and guidelines to them. He further was responsible for conducting inspections of offices of local registrars to ensure compliance with federal and State laws and to ensure the proper maintenance of records. The Commission upheld the DOH's determination that the sales activity had sufficient relationship to their official responsibilities so as to come within the prohibition of section 23(e)(5).

E-7

Does the State Employee's Agency Have Control, Supervision, or Jurisdiction over the Outside Employer? In numerous cases, the Commission has determined that State employees cannot engage in secondary employment when their activities are subject to regulation or inspection by the agency for which they work.

In Case No. 20-92, a Public Health Representative 1, Office of Emergency Medical Services ("OEMS"), Division of Health Facilities Evaluation and Licensing ("DHFEL"), Department of Health ("DOH"), appealed a decision of the DOH Ethics Committee that her secondary employment as a per diem evening shift nursing supervisor at a local hospital constituted a conflict of interest with her Departmental employment. The OEMS is responsible for certifying and conducting routine inspections of hospital-based Mobile Intensive Care Unit programs.

In her capacity as an evening nursing supervisor at the hospital, the DOH employee was the on-site administrator in charge of the hospital during her shift. She had received approval from her supervisor prior to accepting the outside employment. Subsequent to that approval, OEMS was transferred to the DHFEL. The DHFEL is responsible for licensing health facilities in the State and for conducting inspections of the facilities to ensure compliance with statutory and regulatory requirements. The Commission found that the DOH Ethics Committee had balanced the integrity of the DOH's inspection system against the employee's ability to pursue part-time employment and affirmed the ruling of the Committee and the policy prohibiting such activities. The Commission reviewed the situation under sections 23(e)(5) and (7) of the Conflicts Law.

In Case No. 26-92, the Commission concurred with the Department of Law and Public Safety that a Safety Specialist, Division or Motor Vehicles ("DMV"), could not engage in outside employment repairing small holes, chips and cracks in automobile windshields because his customers would be subject to DMV inspection.

In Case No. 24-97, a Conservation Officer III, Division of Fish, Game and Wildlife, Department of Environmental Protection ("DEP"), appealed the DEP's denial of his secondary employment request to participate in the commercial harvest of eels/elvers. The DEP, through the Division, regulates and oversees New Jersey's freshwater fisheries and regulates the commercial harvest of elvers. The DEP employee, in his official capacity, spent between 40 and 60 percent of his enforcement hours working on elvering enforcement during the season. The Commission concurred with the DEP's decision that the employee be denied permission to engage in the commercial harvest of eels/elvers. The Commission reviewed the situation under sections 23(e)(1), (4), (5), and (7) of the Conflicts Law.

Does the Outside Entity Receive Grants from or Contract with the State Employee's Agency? In July 2000, in Case No. 20-00, the Commission determined that, in the absence of enabling legislation, code of ethics or other applicable guidelines, regulations, or policies that prohibit such activity, that all outside employment situations involving grant or contractual relationships take into account the following factors, in addition to the other factors set forth in these Guidelines, in determining whether approval may be granted.

- Whether the position in question was created as a result of the State grant or contract.

- Whether the State employee is in a policymaking or decisionmaking position.

- Whether the State employee had any involvement in the drafting or review of the RFP, the award of the grant, negotiation of the contract, or has oversight responsibilities in connection with the grant or contract.

- Whether the State employee, in his/her official capacity, has authority to refer clients to the outside entity.

- Whether the outside position is in the same geographic area as the employee's State position.

- Whether the State employee has had or can be expected to have any official interaction with the grant recipient or contractor in his/her official capacity.

In Case No. 20-00, the Commission noted that its previous decisions regarding special State officers remained unchanged. Board and commission members make policy, establish grant criteria, review proposals, make decisions, oversee grants and can be expected to have official interaction with the grant recipient(s). Thus, special State officers cannot represent parties before their agencies, cannot receive funding, directly or indirectly, from their agencies, and cannot provide services for agency-funded programs.

Published Works. Under N.J.A.C. 19:61-6.7(b), section 24 of the Conflicts Law, and Commission precedent, a State employee may accept compensation for published works under the following conditions.

- There is no prohibition governing such activity in the Department's enabling legislation or Code of Ethics.

- The State employee must obtain prior approval from his/her Department head.

- The published work must not use or disclose information not generally available to the public.

- The State employee must not use State time or resources in connection with the published work.

- The State employee must not use his/her official title in connection with publication or promotion of the published work.

- The State employee cannot promote, advertise or solicit sales of the published work to co-workers or individuals with whom he/she has official dealings.

- The State employee may not contract to sell the published work to the State except in compliance with section 19 of the Conflicts Law.

- The published work must not have been prepared as part of the State employee's official duties.

In addition, under the current rule, the receipt of compensation from an "interested party" is not prohibited, but is a factor to be considered in deciding whether to grant approval.

In Case No. 255-75, the Commission considered whether employees of the Public Broadcasting Authority ("PBA") could receive a compensation fee for journalistic work used on a commercial station. Various journalists employed full-time by the PBA were approached for the use of news items that they wrote during the hours that they were employed by the State. These scripts, films or tapes were being used on commercial TV channels. The commercial stations wished to compensate the journalists for the use of their work. The Commission determined that it would be a violation of section 24 of the Conflicts Law for State employees to receive compensation from any source other than the State for news items created as part of their official duties.

In Case No. 3-84, the Commission found that the Supervising Program Development Specialist, Bureau of Research, Division of Youth and Family Services ("DYFS"), Department of Human Services ("DHS"), could not accept a cash award from a gerontological society for a paper prepared by him as a DYFS employee.

The DHS was awarded a grant to study abuse of the elderly. Because of his experience in the field of gerontology, the State employee was assigned the task of preparing a paper on the subject as part of his official duties. The paper was prepared entirely on State time with grant monies administered by the State. The State employee
then submitted the paper for consideration for an annual research award and was the recipient of that award. The Departmental Ethics Review Board concluded that the acceptance of the cash award was violative of the Department's Code of Ethics. The Commission noted that the employee had solicited the award and affirmed the DHS' determination. The State employee appealed the Commission's decision to the Superior Court, Appellate Division, which upheld the Commission's determination.

In 1997, the Department of Law and Public Safety requested an opinion as to whether a Division of Law Deputy Attorney General ("DAG") was permitted to co-author a book about psychics and the paranormal, Case No. 3-97. The DAG wanted to write the book in her private capacity and use her married name (she is known by her maiden name in her employment with the Department). The Commission determined that the DAG was permitted to co-author the book under the following conditions: that she not refer to her status as a DAG or member of the Department; that she not permit the use of her title or employment in connection with publication or promotion of the book; that she not write about an active case or use information not generally available to the public; that she avoid any legal analysis that could be interpreted as Division of

Law work product; that she not use State time or resources in connection with her outside activity.

In Case No. 34-98, the Commission determined that the Managing Actuary, Division of Life and Health, Department of Banking and Insurance ("DOBI"), was permitted to co-author and market a study guide utilized by students preparing to take the Society of Actuaries ("SOA") professional examination under the Commission's rules, precedent, the Conflicts of Interest Law and the DOBI Code of Ethics. In approving the activity, the Commission took into account the following factors: the study guide is sold nationally and not just to New Jersey exam registrants, the employee co-authored the book while at Temple, uses only his name and not his official title in connection with the study guide and does not directly solicit regulated entities.

Additional examples of published works situations that have been addressed by the Commission can be found under "Published Works" at http://nj.gov/ethics/statutes/guide/published_works.html .

Political Activity. The Commission permits involvement in partisan political activities provided that there is no provision in the agency code of ethics prohibiting such activities. State employees, however, may not use State time or State resources in pursuit of such activities and must notify their Departmental Ethics Liaison Officer. The Department of Personnel has issued regulations that address the political activities of State employees. These regulations, which reference the Federal Hatch Act, are not administered or enforced by the Commission.

In Commission Case No. 435-77, the Commission determined that a Department of Health employee was permitted to serve as chairman or co-chairman of a public employees' committee in support of a gubernatorial candidate. The State employee was cautioned that he must not use or attempt to use his official position to secure unwarranted privileges or advantages for the candidate of his choice. Further, he must be careful not to permit his political activities to conflict with the proper discharge of his duties in the public interest.

In Commission Case No. 34-85, two members of the Board of Dentistry were advised that *N.J.S.A.* 52:13D-24 expressly permits the solicitation and acceptance of campaign contributions for announced candidates for elective public office. The dentists were cautioned, however, about political activities which directly involve persons subject to licensure and review by the Board of Dentistry. The dentists sent letters, on personal stationery, to thousands of New Jersey licensed dentists, to solicit re-election campaign funds for a New Jersey Assemblyman.

Additional examples of political activity situations that have been addressed by the Commission can be found under "Political Activities" at http://nj.gov/ethics/statutes/guide/political_activities.html .

Prohibited Outside Activity – Certain Officials. Section 24d.(1) of the Conflicts Law prohibits certain designated State officers from soliciting, receiving or agreeing to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of

income from any source, other than the compensation paid or reimbursed to him/her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest in a trust, financial compensation received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for authorized travel.

For the purposes of this provision, designated State officer includes: the Governor, the Adjutant General, the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Labor and Workforce Development, the Commissioner of Personnel, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor.

Note also that, pursuant to Section X of the Uniform Ethics Code, an agency head or assistant head is prohibited from engaging in any private business transactions with any employee of his/her agency.

General Caveats. The Commission generally provides the following advice to individuals with approved outside activities. State time cannot be used for outside activities. State resources, including but not limited to telephones, facsimile machines. e-mail, copy machines, mail service and office supplies, cannot be used for outside activities. Coworkers and/or individuals with whom the State employee comes in contact in his/her official capacity cannot be solicited as clients for outside activities, including but not limited to real estate services, cosmetic sales, consulting services, and legal services. State employees are also prohibited from referring clients to any firm with which they are associated.

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APPENDIX F

Blind Trusts

1. For those situations where a blind trust may be utilized by a State officer or employee or special State officer or employee, his/her spouse or domestic partner or dependent children, and approved by the Commission, such trust shall contain the following characteristics:

a. The trust shall not contain investments or assets in which the holder's ownership right or interest is required to be recorded in a public office or those assets whose permanency makes transfer by the trustee improbable or impractical; these investments or assets would include, but not be limited to, businesses, real estate, security interests in personal property and mortgages;

b. The trust shall contain a clear statement of its purpose, namely, to remove from the grantor control and knowledge of investment of trust assets so that conflicts between grantor's responsibilities and duties as a public employee or public officer and his or her private business or financial interests will be eliminated;

c. The trust shall be irrevocable, and shall be terminated only upon the death of the public employee or public officer or upon termination of his or her status as a public employee or public officer whichever shall first occur;

d. The trustee shall be directed not to disclose to the grantor any information about any of the assets in the trust;

e. The trustee shall be required either to:

(1) prepare and file the grantor's personal income tax returns, withholding from distribution of the trust's net income amounts sufficient to pay the grantor's tax; and further to participate in the audit of the grantor's returns during the period of the trust with authority to compromise the grantor's tax liability; or

(2) submit to the grantor, for income tax purposes, a certification of income paid without identifying the assets producing such income;

f. Among its other powers, the trustee shall have authority to determine whether any of the assets originally transferred to the trustee are to be sold and, if so, when;

g. A provision shall be included in the trust agreement prohibiting the trustee from investing the trust property in corporations or businesses which do a significant amount of business with the State of New Jersey or from knowingly making any investment in a corporation, business or venture over which the grantor has regulatory or supervisory authority by virtue of his or her official position;

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h. The grantor shall retain no control over the trustee nor shall he or she be permitted to make any recommendations or suggestions as to the trust property;

i. The trustee shall be a commercial trustee and not a natural person;

j. The principal benefit to be retained by the grantor shall be the right to receive income from the assets transferred to the trust;

k. The trust shall not become effective until submitted and approved by the Commission; and

l. The trust agreement shall provide the trustee will give the Commission access to any records or information related to the trust which is necessary for the performance of the Commission's duties.

2. A copy of the executed blind trust agreement shall be filed with the Commission and with the head of the department in which the State officer or employee holds his/her position. If the grantor is the head of the department, a copy of the executed blind trust shall be filed with the Chief Counsel to the Governor. Attached to such copy shall be a brief statement outlining the business or financial interests from which the State officer or employee seeks to remove himself/herself and the actual or potential conflicts of interest, or appearance of such conflicts, which he/she seeks to avoid by use of the trust agreement.

Blind Trust.doc

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APPENDIX G

GUIDELINES GOVERNING THE USE OF OFFICIAL STATIONERY

State officers and employees and special State officers and employees frequently write letters for various purposes which are not always related to their official duties. Questions about the propriety of letters written on State stationery to further the personal interest of the officer or employee or another individual or entity have been addressed to the State Ethics Commission. To help resolve these questions, the Commission has established the following Guidelines to clarify the use of official stationery for purposes other than the conduct of a State agency's business.

Permissible Uses of Official Stationery

The Commission has determined that the following uses of State stationery are generally permissible:

1. To recommend a current or former employee or colleague for another position, admission to a school or program, etc.

Example: Recommending a subordinate for admission to graduate school.

2. To respond to inquiries from a private entity about a current or former employee or colleague.

Example: Providing a character reference for an employee to an adoption agency during the course of the employee's application to adopt a child.

Note: These permissible uses are only acceptable so long as the use of official stationery does not create an impression that the State officer or employee is engaged in an unwarranted use of his or her position. For example, it would not be appropriate for a State employee to recommend an individual for inclusion in a program over which the State employee has supervisory or regulatory authority. In addition, there must be a reasonable connection between the officer's or employee's official duties and the use and purpose of the letter.

Impermissible Uses of Official Stationery

The Commission has determined that the following examples represent clearly impermissible uses of State stationery:

1. To promote a candidate for elective office.

Example: Writing an endorsement of a candidate for the legislature for inclusion in a campaign pamphlet.

2. To endorse a State vendor or contractor.

Example: Writing a letter of general recommendation for a State vendor for dissemination by the vendor. Note, however, that a letter complimenting the vendor for a job well done may be acceptable even though the vendor may later display the letter.

3. To express a personal opinion on a matter that is not related to one's official duties.

Example: Sending a letter to the editor of a newspaper commenting on a matter that is not related to the duties of the State officer or employee or his or her agency.

4. To secure a personal financial gain or pursue a vested interest for one's self.

Example: Writing to a private contractor (plumber, electrician) demanding a refund or a reduction in a quoted price.

Personal Stationery Imprinted with Agency, Office or Title

The Commission has determined that use of personal stationery imprinted with the agency office or title of a State officer or employee, even though paid for personally, is impermissible. Such stationery may create the appearance of official stationery or may create an impression that the State officer or employee is acting in an official capacity.

The Commission acknowledges that there are occasions when it may be appropriate for a State officer or employee to identify himself or herself by position or title in correspondence on personal stationery (i.e., stationery bearing the individual's name and home address).

Agency Use of Official Stationery for Solicitations

1. State agencies shall not solicit contributions of any kind from vendors to the agency or from entities regulated by the agency.

2. Solicitation of any other entities is subject to review and approval by the agency's Ethics Liaison Officer prior to any contact by the agency. The Ethics Liaison Officer must be advised of the purpose of the solicitation, the expected result, the identities of the entities to be solicited, whether there is any personal connection between the agency employees and the solicited entity, and must be provided with a sample of the solicitation letter.

3. The Ethics Liaison Officer should determine whether the solicitation would be problematic under the Uniform Ethics Code, the agency's code of ethics, the Conflicts of Interest Law, any Guidelines promulgated by the Commission, and/or any statutory provisions dealing with charitable contributions. The Ethics Liaison Officer should consider such factors as whether the agency has any business contacts with the recipients of the solicitation, whether any solicited products or services will directly benefit any agency employees, whether the solicitation is of

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such magnitude that it could be burdensome to the recipient, and whether the language of the solicitation is coercive.

4. The Ethics Liaison Officer shall copy the Commission on all determinations regarding solicitations.

Circumstances that do not fall within the permissible or impermissible examples above require an individual determination by the Commission. Questions and inquiries should be addressed to: State Ethics Commission, P.O. Box 082, Trenton, New Jersey 08625-0082; (609) 292-1892.

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APPENDIX H

POST-EMPLOYMENT RESTRICTIONS
NEW JERSEY CONFLICTS OF INTEREST LAW

This memorandum presents a comprehensive overview of the State Ethics Commission's decisions, policies and guidelines concerning the post-employment provisions of the Conflicts Law. Presented below are general explanations of the statutory provisions as well as summaries of past Commission cases. The case presentations are designed only to provide examples of post-employment issues that have been addressed by the Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

The sections of the Conflicts Law covering post-employment are *N.J.S.A.* 52:13D-17, the general prohibition, and 17.2(c) and (d), the casino post-employment restrictions. In addition, the Uniform Ethics Code contains a one-year ban on certain State officials' interactions with their former agencies.

N.J.S.A. 52:13D-17 provides:

> No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed $1,000 or imprisonment not to exceed six months, or both.

In addition, for violations occurring after the effective date of P.L.2005, c.382, any former State officer or employee or former special State officer or employee of a State agency in the Executive Branch found by the State Ethics Commission to have violated any of the provisions of this section shall be assessed a civil penalty of not less than $500 nor more than $10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (*C.2A:58-10* et seq.).

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N.J.S.A. 52:13D-13(g) defines "interest" as:

> "Interest" means (1) the ownership or control of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for profit other than a professional service corporation organized under the "Professional Service Corporation Act," P.L. 1969, c.232 (C. 14A:17-1 et seq.); or (2) the ownership or control of more than 1% of the profits of a firm, association, or partnership, or more than 1% of the stock in any corporation, which is the holder of, or an applicant for, a casino license or in any holding intermediary company with respect thereto, as defined by the "Casino Control Act," P.L. 1977, c.110 (C. 5:12-1 et seq.). The provisions of this act governing the conduct of individuals are applicable to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their shareholder interest in such a corporation.

APPLICATION OF SECTION 17 - GENERAL POST-EMPLOYMENT PROHIBITION

Specific Cause, Proceeding, Application or Other Matter

Section 17 prohibits a former State officer or employee or special State officer or employee from representing, appearing for, negotiating on behalf of, providing information or services not generally available to the public or agreeing to perform any of those activities for any party, other than the State, in connection with those causes, proceedings, applications or other matters in which the officer or employee had made any investigation, rendered any ruling, given any opinion or been otherwise substantially and directly involved while in State employment. There is no time limit on this prohibition.

It is important to note that these restrictions apply to <u>specific</u> causes, proceedings, applications or other matters. This restriction does not extend to "determinations of general applicability or the preparation or review of legislation which is no longer pending before the Legislature or the Governor." In addition, the Commission determined *In the Matter of Walter J. Maibach*, Case No. 179-93, that a regulation enacted pursuant to rulemaking authority is analogous to legislation and, in accordance with the definition of section 13(h), is not a "matter" when it is no longer pending.

Whether a cause, proceeding, application or other matter at issue in a post-employment question is categorized as specific or general is a determination made by the Commission on a case-by-case basis. Questions about the nature of matters with which employees had involvement during the course of their official duties should be directed to the Commission.

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Substantial and Direct Involvement

In certain situations it may be difficult to determine whether a former State officer or employee or special State officer or employee was "substantially and directly involved" in a certain matter or whether such officer or employee had merely been technically or formally involved. Such determinations are made as individual cases arise. In considering whether a former State employee had substantial and direct involvement in a matter, the Commission has typically reviewed such factors as whether the individual had supervisory responsibility, provided input, submitted reports, signed contracts on behalf of the agency, attended meetings, approved applications, had access to confidential information, or was directly involved in decision making.

Providing Information Not Generally Available to the Public

Section 17 prohibits former State officers and employees or special State officers or employees from providing information not generally available to the public. The Commission normally solicits input from the former officer's or employee's agency and also considers whether the information is available under the Open Public Records Act, *N.J.S.A.* 47:1A-1 et seq.

Application of Restriction to Partnership, Firm or Corporation

The restrictions contained in the Conflicts of Interest Law apply to the partnership, firm or corporation under the following circumstances: (1) if the former State officer or employee or special State officer or employee is a shareholder, associate or professional employee of a firm organized as a professional service corporation or (2) if the former State officer or employee or special State officer or employee owns or controls more than 10% of the stock of a corporation or more than 10% of the profits or assets of a firm, association or partnership.

The post-employment restrictions extend, therefore, to former State officers or employees and special State officers or employees personally and to any employees or officers of any professional service corporation with which he/she is employed or associated or is a shareholder. In addition, the restriction also extends to those employees or officers of partnerships, firms or corporations in which the former State officer or employee or special State officer or employee has more than 10% ownership or control. If a former State officer or employee or special State officer or employee is employed by a company in which he/she does not have more than a 10% interest, and the company is not a professional service corporation, the restrictions contained in the Conflicts Law pertain to him/her <u>personally</u> but do not extend to the corporation by which he/she is employed.

Penalty

Section 17 of the Conflicts Law was amended in 2006. For violations occurring after the effective date of the amendment, March 15, 2006, any former State officer or employee or former special State officer or employee of a State agency in the Executive Branch found by the

Commission to have violated any of the provisions of section 17 shall be assessed a civil penalty of not less than $500 nor more than $10,000.

In addition, the fine for a violation of section 17 that is punishable as a disorderly persons offense was increased from $500 to $1,000.

SAMPLE GENERAL POST-EMPLOYMENT CASES ADDRESSED BY THE COMMISSION

Employment With a Firm With Which State Officer or Employee Has Contact in His/Her Official Capacity

The Commission has addressed the issue of employment with a firm with which a State officer or employee or special State officer or employee has contact in his/her official capacity on numerous occasions. Listed below are some examples.

In 1979, the State employee, a Highway Supervisor, Division of Design at the Department of Transportation ("DOT") requested permission to accept a position with a firm with which he came in contact in his official capacity. The Division of Design was responsible for all phases of projects involving bridges, drafted the actual contract agreement, supervised its administration, and acted as liaison between the consultant and the Department. The actual choice of the consulting firm was the responsibility of the Contract Selection Committee which was separate and apart from the Division of Design. The employee was not a member of the Contract Selection Committee.

The Commission determined that it would not be a conflict of interest for the employee to accept a consultant position with the firm. He was, however, permanently restricted from representing, appearing for or negotiating on behalf of the firm on any matter in which he had been substantially and directly involved during his State employment. The Commission requested that as a member of the consulting firm, he refrain from working on any bridge projects that were before the DOT while he was a State employee. There were no restrictions on his participation on behalf of the consulting firm on new matters. *In the Matter of Gary Case*, Commission Case No. 763-79.

In 1980, a Department of Energy employee received an offer of employment from a subcontractor with whom she had interaction in her official capacity. The interaction included accompanying the subcontractor on "walk throughs" of institutions applying for grants from the Department and auditing and monitoring the status of grant applications.

The Commission reviewed the matter under the section 17 post-employment restriction and also considered whether the employee had exercised an unwarranted privilege prohibited by section 23(e)(3) of the statute. The Commission determined that although the employee had some involvement and contact with the subcontractor in her official capacity, there did not appear to have been any substantial and direct involvement in a specific matter by the employee during the course of her employment. As to the unwarranted privilege provision, the

Commission determined that since the employee did not solicit the position with the subcontractor but rather was approached by the subcontractor and immediately contacted her supervisor regarding the offer of employment, no unwarranted privilege existed. *In the Matter of Frances Kelly*, Commission Case No. 875-80.

In 1990, the Commission considered a situation in which the State employee was offered a position as vice-president of Facilities Maintenance for a construction management and development company. As a State employee, the individual had been an engineer in the Bureau of Lease Construction, Department of the Treasury, and had been involved in monitoring construction at 2 of the 14 properties owned by the company and leased to the State.

The Commission discussed whether there was an improper "revolving door" appearance to the employee being offered the position. Upon learning that the development company had solicited the employee for the vice-president position and that the employee had not sought the position, the Commission considered the appearance issue to be resolved. The Commission then determined that section 17 did not bar the employment with the development company but that the employee could not represent the company with respect to the two properties with which he had involvement as a State employee. *In the Matter of Lewis Ischinger*, Commission Case No. 5-90.

Matters Pending Before Former Employee's Former Agency

Former State officers and employees or special State officers or employees are not prohibited from working on matters that originated in their former agencies subsequent to their leaving State service so long as they had no substantial and direct involvement in those matters.

In 1974, the former Acting Director of the Division of Water Resources in the Department of Environmental Protection ("DEP") requested an opinion from the Commission as to whether he could accept employment with a consulting firm that had several matters before the Division. These matters included a stream encroachment permit, two water pollution control permits, a loan offer and grant offer.

The Commission determined that since the Acting Director's signature appeared as approving the two water pollution control permits, the loan offer and the grant offer, he was precluded from becoming involved in those matters during his employment with the firm. Because he was not involved with the stream encroachment permit, the Commission found that it did not fall with the section 17 prohibition. *Advisory Opinion No. 23.*

In 2001, the Commission considered whether the former Administrator, Office of Finance and Management, Division of Solid Waste, DEP, was permitted to represent ABC in connection with efforts to obtain a solid waste facility permit to operate a transfer station.

In 1994, XYZ had filed an application with the Division for a solid waste facility permit to expand its then operating transfer station and materials recovery facility. Staff who reported to the former Administrator reviewed the application and prepared a draft permit. A public

hearing on the draft permit was held in July; the former Administrator acted as the hearing examiner. In August, the final permit was issued under the former Administrator's signature, with an expiration date of August 2000. In 1995, the permit was further modified to include a recycling operation. The modification was issued under the former Administrator's signature; his employment with the Division and with the State terminated in March 1997.

XYZ filed a permit renewal application in the spring of 2000 and that application was pending with the Division at the time of the Commission's review. ABC was in the process of purchasing the assets of XYZ and wished to become the owner/operator of the transfer station. The former Administrator, or the firm with which he was currently associated, wanted to represent ABC in its efforts to obtain a solid waste facility permit to operate the transfer station.

The Commission determined that the ABC permit application was a new matter for the purposes of section 17. The XYZ permit was not transferable. When the sale of XYZ's assets to ABC took place, the existing permit would be revoked and ABC would then be required to comply with DEP regulations applicable to new permits. *In the Matter of Robert C. Ciolek*, Case No. 39-01.

Employment by Entities Contracting With Former Agency

In 1972, the former Chief of the Bureau of Financial Aid at the Department of Community Affairs ("DCA") requested permission to accept employment with the City of Orange, whose program he was responsible for coordinating during his tenure at the DCA. The employee made the contract arrangements with the city for funding from DCA; however, he did not sign off on the pending contracts.

The Commission determined that the former employee made the contract arrangement for funding by the DCA and that such activity on the part of the employee constituted direct involvement within the meaning of section 17. All monies for administering the municipality's program came from the DCA. *Advisory Opinion No. 2.*

Subsequent to the rendering of *Advisory Opinion No. 2*, the contract in which the former Bureau Chief was originally involved expired. A new contract between Orange and the DCA was ready for execution. Orange wished to engage the former Bureau Chief under this new contract. The Commission sought advice from the Attorney General's Office. In Attorney General Opinion M72-0414, it was determined that the employment of the former Bureau Chief by Orange under a newly executed contract would not violate section 17. The Opinion noted that when the new contract is signed, the direct connection between the funded program and the former employee is severed. The Opinion further stated that "termination of the contract in which the former employee was directly involved appears to be the reasonable point at which the restriction upon the former employee's post-employment activities should also be terminated."

In subsequent cases, the Commission has affirmed its position that a new contract is a new matter for the purposes of the post-employment restriction. (*In the Matter of Rose Zeltzer*, Case No. 3-95, *In the Matter of Michael Rowe*, Case No. 2-96, *In the Matter of Patricia A. Stolpe*, Case No. 35-03).

In 1980, the Commission issued two advisory opinions dealing with employment by entities receiving funding from a former agency and distinguished the cases based on the "substantial and direct" involvement criteria articulated in the statute.

In the first instance, the Commission addressed a situation that involved an individual who worked for the State Law Enforcement Planning Agency ("SLEPA") as a Senior Planner. During the course of his employment, he had official associations with a County Director of a Planning Board who was anxious to participate in a SLEPA Planning Program. The Senior Planner advised the Director to send a letter to SLEPA stating the county's interest in the program, which the Director did. Several months subsequent to receiving information from SLEPA, the Director submitted an application seeking SLEPA funding for his County Planning Program. The Senior Planner then assisted the Director in completing the application by providing data relative to the program and, in particular, to the county's personnel and financial needs. The Senior Planner then became interested in the position that was funded by the SLEPA grant.

The Commission determined that since the individual was substantially and directly involved in the awarding of the SLEPA grant, he was precluded from such employment due to the post-employment restriction. *Advisory Opinion No. 37.*

The Commission considered two related requests for advice involving former SLEPA employees who had accepted or desired to accept positions of employment with county agencies receiving SLEPA grants. The individuals, in their capacities as State employees, had no involvement in processing or otherwise acting upon the grant applications of the county agencies that later became their employers.

The Commission determined that the employment was not proscribed as the former State employees were not substantially and directly involved in these matters during the course of their State employment. The Commission determined that, in and of itself, a grantor-grantee relationship between an individual's former State agency and his subsequent non-State employer normally does not give rise to a prohibited post-employment situation within the framework of section 17. The Commission noted that, of course, the applicability of the post-employment restriction of the Conflicts Law to any given sets of facts and circumstances ultimately can be determined only by direct inquiry to the Commission. *Advisory Opinion No. 39.*

Multi-faceted Projects

The Commission has considered a number of cases involving multi-faceted projects that are of long duration or sequential in development and has declined to segment the projects for the purposes of the post-employment restriction.

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In 1998, the Commission was asked whether modifications to an RFP constituted a new matter for the purposes of the post-employment restriction. The former employees acknowledged that they were substantially and directly involved with the original RFP during their State employment. However, they advanced the position that the modified RFP was a new matter because the earlier RFP intended that the work be accomplished through the mandatory use of a particular system. The use of that system was not mandatory in the later RFP on which they bid. The Commission found that the utilization of alternate methodologies to accomplish project goals does not constitute a new matter for the purposes of the post-employment restriction. *In the Matter of Linda Anselmini and Lora Levosky,* Commission Case No. 22-98.

In 1999, the Commission considered whether the former State employee's post-employment activities in connection with the closure of several contaminated sites were violative of section 17. The Commission determined that the former employee was substantially and directly involved in the closure while he was a DEP employee based on a sizable record indicating his participation in meetings and correspondence dealing with specifics of the closure. With respect to the matter, the Commission had to determine whether the matter involved the entire closure process or whether the closure process should be segmented based on changes in regulations and modifications in the technologies applied to the site. After an extensive review, the Commission determined that the closure process should not be segmented for the purposes of the post-employment restriction and, thus, determined that section 17 precluded the former employee's involvement in the closure on behalf of his employer. *In the Matter of Kenneth Siet,* Commission Case No. 6-99,

In 2004, a former State employee requested that the Commission consider whether his previous involvement in a 1996 Landfill Closure/Post Closure Plan ("1996 Plan") during his tenure with the DEP precluded him, or the law firm with which he was now associated, from representing a party other than the State in litigation stemming from the closure.

The employee's position was that the 1996 Plan had been superseded by a 2002 Plan, with which he had had no involvement, and, thus, the post-employment prohibition did not apply. The Commission viewed the 2002 Plan as a revision to the 1996 Plan, not as a new matter. Because the former employee was substantially and directly involved in the 1996 Plan, the Commission determined that he was precluded from having any involvement in the landfill closure. The former employee had no ownership or shareholder interest in the law firm, and the firm was not organized as a professional service corporation; therefore, the restriction on the former State employee did not apply to the firm. *In the Matter of Robert C. Ciolek,* Commission Case No. 13-04.

One-Year Ban – Certain State Officials

In accordance with the recommendation of the Special Counsel for Ethics Review and Compliance, the Uniform Ethics Code specifies that for one year after the termination of the State office or employment of any of the individuals noted below, he/she shall not represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of

any person or party other than the State with or before any officer or employee of the State agency in which he/she served. The provisions of this subsection shall not apply to any partnership, firm or corporation in which he/she has an interest or is employed, or to any partner, officer, director or employee of such partnership, firm or corporation. Nothing contained in this section prohibits a State agency from contracting with a former State officer or employee to act on behalf of the State.

The one-year ban applies to any head, deputy head or assistant head of any principal department, board, commission or authority, the Superintendent of State Police, the Governor's Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel, Director of Communications, Policy Counselor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor.

In addition to the prohibition dealing with one's former agency, the governor and each head of a principal department in the Executive branch are prohibited, for one year after the termination of office or employment, from registering as a "governmental affairs agent," as that term is defined in *N.J.S.A.* 52:13C-20. *N.J.S.A.* 52:13C-21.4. This provision is not enforced by the State Ethics Commission.

Summary

In summary, the general post-employment restrictions do not prohibit a former State officer or employee or special State officer or employee or any firm in which he/she has an interest from representing a party other than the State concerning:

- Determinations of general applicability.

- Preparation or review of legislation that is no longer pending before the Legislature or the Governor.

- Regulations no longer pending before an agency since these are not specific causes and are analogous to legislation.

- Any matter pending before any State agency, including the individual's former agency, if the former officer or employee or special State officer or employee was not "substantially and directly" involved in the matter while employed by the State.

- Accepting employment with entities that contract with the individual's former agency or any other State agency if the State officer or employee or special State officer or employee was not "substantially and directly" involved in the matter in question.

- Providing information generally available to the public.

- Accepting employment with a firm with which the State officer or employee or special State officer or employee had contact in his/her official capacity.

However, certain State officials are subject to additional one-year bans on their post-employment activities.

Seeking Future Employment

In the past, the Commission has determined that employees who have direct and substantial contact with any interested parties must refrain from circulating resumes or in any manner initiating employment discussions with those individuals or entities while still in State service. If an employee is solicited for potential employment by an interested party, that solicitation must be disclosed immediately to the employee's management and to the departmental ethics liaison officer to avoid a situation where an employee may appear to be using his/her official position to gain an unwarranted advantage. Employees who do not have direct and substantial contact with interested parties may circulate resumes and enter into discussions regarding potential employment with those firms as long as they avoid a situation that may give rise to an unwarranted advantage. All employees are cautioned that discussions, interviews, and negotiations should not take place on State time. *In the Matter of Theodore Fischer*, Commission Case No. 83-88.

SECTION 17.2(c) and (d) - CASINO POST-EMPLOYMENT RESTRICTION

N.J.S.A. 52:13D-17.2 (c) and (d) provide:

> c. 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 as provided in section 3 of P.L.2009, c.26 (*C.52:13D-17.3*), and except that:

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(1) 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 State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, 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;

(2) an employee who is terminated as a result of a reduction in the workforce at the agency where employed, other than an employee who held a policy-making management position at any time during the five years prior to termination of employment, may, at any time prior to the end of the two-year period, accept employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the employee. In no case shall the restrictions of this subsection apply to a secretarial or clerical employee. Nothing herein contained shall alter or amend the post-employment restrictions applicable to members and employees of the Casino Control Commission and employees and agents of the Division of Gaming Enforcement pursuant to subsection e.(2) of section 59 and to section 60 of P.L.1977, c.110 (*C.5:12-59* and *C.5:12-60*); and

(3) any partnership, firm or corporation engaged in the practice of law or in providing any other professional services with which any person included in paragraph (1) of subsection a. of this section, or a member of the immediate family of that person, is associated, and any partner, officer, director or employee thereof, other than that person, or immediate family member, may 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 company 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, and that person or immediate family member shall not be barred from association with such partnership, firm or corporation, if for a period of two years next subsequent to the termination of the person's office or employment, the person or immediate family member (a) is screened from personal participation in any such representation, appearance or negotiation; and (b) is associated with the partnership, firm or corporation in a position which does not entail any equity interest in the partnership, firm or corporation. The

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> exception provided in this paragraph shall not apply to a former Governor, Lieutenant Governor, Attorney General, member of the Legislature, person included in paragraph (2) of subsection a. of this section, or to the members of their immediate families.
>
> d. This section shall not apply to the spouse of a State officer or employee, which State officer or employee is without responsibility for matters affecting casino activity, who becomes the spouse subsequent to the State officer's or employee's appointment or employment as a State officer or employee and who is not individually or directly employed by a holder of, or applicant for, a casino license, or any holding or intermediary company**.**

Section 17.2(c) prohibits a "person" 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, or any holding or intermediary company with respect to such holder of, application for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity. This prohibition extends for a period of two years. Section 17.2(c) was amended on December 20, 1993 to provide an exception for members of a "person's" immediate family. Under the amendment, a family member is permitted to hold employment with the holder of, or applicant for, a casino license, if the Commission determines that such employment will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest. An amendment effective January 25, 1995 provides that a non-policy-making employee terminated as a result of a reduction in force may, prior to the end of the two-year period, accept employment with a casino license holder or applicant if the Commission determines that there is no actual conflict of interest or the public perception of a conflict. An amendment dated January 12, 2010 provides an exception to the two year ban if the “person” or a member of the “person’s” immediate family is employed by a partnership, firm or corporation providing professional services to a casino licensee or applicant or holding or intermediary company of the licensee or applicant. Under the exception, the entity may engage in casino-related matters but the “person” or member of the “person’s” immediate family must be screened from these matters for a period of two years following the termination of the person’s State employment. This exception is not applicable if the “person” holds an equity interest in such entity, or is the former Governor, Lieutenant Governor, or Attorney General or a member of the immediate family of one of these individuals.

Section 17.2(a) defines "person" as:

> any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or full-time member of the Judiciary; any full-time professional employee of the Office of the Governor, or the Legislature;

> members of the Casino Reinvestment Development Authority; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board of zoning board of adjustment.

Section 13(i) defines "member of the immediate family" as:

> the person's spouse, child, parent or sibling residing in the same household.

Application of Restriction to Partnership, Firm or Corporation

The restrictions contained in section 17.2(c) apply to "persons" and immediate family members not granted a waiver and to any partnership, firm or corporation with which such "person" is associated or in which he/she has an interest. The Conflicts Law defines "interest" as the ownership or control of more than 10% of the stock of a corporation or more than 10% of the profits or assets of a firm. The restrictions in 17.2(c) do not extend to a partnership, firm or corporation that is providing professional services if the “person” is not an equity partner.

Effect of Restriction on Employment by Casino Association

In Advisory Opinion No. 41, the Commission determined that, under the application of section 17.2(c), a "person" may not become employed by the Casino Association of New Jersey ("Casino Association") immediately upon leaving State service.

The Casino Association is a non-profit corporation and holder of a non-gaming casino service industry license that operates as a trade association representing the collective interests of Atlantic City casino licensees. Among other things, the Association works to promote the common good of the industry and its members and to provide liaison between the industry and other parties, be they governmental, business, labor, social or civic.

In Advisory Opinion No. 41, the Commission noted that section 17.2 is a part of the Conflicts Law which has as its paramount objective to "ensure propriety and preserve public confidence." *N.J.S.A.* 52:13D-12(b). Section 17.2 supplements both the Casino Control Act and the Conflicts Law in fostering and maintaining this objective. It represents an additional step "to sanitize casino gambling and its potentially corrupting effect upon government." See *Knight v. Margate*, 88 *N.J.* 374, 392 (1981). It is the Commission's view that a technical interpretation of section 17.2(c) that would allow "persons" leaving State service to be employed by the Casino Association would be inconsistent with the overall objectives and purposes of the statute even

though the Casino Association is not a casino license holder. Its membership is exclusively casino license holders and it acts to further the aggregate interests of those casino license holders in a number of areas, including interaction with State government. This is exactly the kind of relationship between State "persons" and the casinos that is intended to be regulated by the section 17.2(c) post-employment ban. *Advisory Opinion No. 41*.

Members of the Bar

Former State officers and employees who are also members of the bar must also adhere to the ethical standards adopted by the New Jersey Supreme Court:

Except as law may otherwise expressly permit, and subject to RPC 1.9, a lawyer who formerly has served as a government lawyer or public officer or employee of the government shall not represent a private client in connection with a matter: (1) in which the lawyer participated personally and substantially as a public officer or employee, or (2) for which the lawyer had substantial responsibility as a public officer or employee; or (3) when the interests of the private party are materially adverse to the appropriate government agency, provided, however, that the application of this provision shall be limited to a period of six months immediately following the termination of the attorney's service as a government lawyer or public officer. (RPC 1.11 (a)).

The scope of New Jersey's Conflicts of Interest Law is at least as broad as the rules covering attorney ethics. Requests for advice on the application of the Rules of Professional Conduct should be directed to the Supreme Court Advisory Committee on Professional Ethics.

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APPENDIX I

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.

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.

19:61-7.4 Situations where recusal is required

(a) A State official is required to recuse himself or herself from an official matter that involves any private sector individual, association, corporation or other entity that employed or did business with the State official during the one year prior to the official's commencement of State service. This recusal shall remain in effect for one year after the commencement of the official's State service.

(b) A State official is required to recuse himself or herself on an official matter if he or she had any involvement in that matter, other than on behalf of the State, prior to commencement of his or her State service. The recusal shall remain in effect until the agency no longer has any interest in the matter.

(c) A State official is required to recuse himself or herself from an official matter that involves any individual, association, corporation or other entity from which the State official received a campaign contribution, individually or in the aggregate, in an amount required to be reported by

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N.J.A.C. 19:25-10. Recusal is required regardless of whether the State official is elected to the office or position associated with the campaign contribution. The recusal shall remain in effect until the expiration of the term of office which the State official was seeking when the contribution was made.

(d) 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.

(e) For purposes of (d) 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.

(f) An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of (d) and (e) 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.

(g) 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:

1. 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).

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2. 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 or 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).

3. 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.

4. 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.

5. The Governor signed an Environmental Act that requires the establishment of a nine member Oversight Council, four of whom must be county and municipal officials from the region. One of the municipal officials appointed to the Council was recently elected and one of the county officials appointed to the Council recently lost his bid for State Senate. A local engineering firm made a substantial campaign contribution to the successful campaign of the municipal official, and another large donation to the county official's unsuccessful campaign for the State Senate.

Pursuant to N.J.A.C. 19:61-7.4(c), the recently elected municipal official would have to recuse on those matters involving the engineering firm until his current term of office expires. If he sought re-election and received no contribution from the same engineering firm, the recusal rule would no longer be applicable once the new term commences.

Similarly, the county official who unsuccessfully sought a State Senate seat would also have to recuse from matters involving the engineering firm for the duration of the term of that Senate seat because the engineering firm's donation to his campaign could create the impression of conduct violative of his trust as a State official in his current position. If this county official subsequently runs for the State Senate seat again and he accepted another contribution from this

engineering firm, he would also have to recuse for the next term of office for the State Senate seat.

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.

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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 matters specifically involving the above-named organization to be referred to my supervisor (or subordinate, if no other option) without consulting me or informing me that such matters are pending. This action is taken with the concurrence of my supervisor (or subordinate), as indicated below.

I understand that this recusal will remain in effect until I inform you in writing that all employment seeking activity has terminated and I receive written permission from the agency ethics liaison officer to resume interactions with the outside organization.

_____

Employee's Name

Recommend: _____ _____
(Name of Employee's Director/Supervisor) Date

Approve: _____ _____
Ethics Liaison Officer Date

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Sample Recusal Statement: Conflicts

DATE: _____

TO: Designee(s)

FROM: Name of Employee

SUBJECT: Recusal

Because I may be seen to have a conflict of interest in matters affecting (name of entity or individual) relating to (family relationship, former affiliation with firm, etc.), I am delegating all responsibility and authority for handling any such matters to you. Please ensure that I am screened from any information or communications on any such matters.

By copy of this memorandum, I am instructing (appropriate contacts in office**)** to ensure that I do not receive any communications on any matters affecting (name of entity or individual)**.** This recusal will remain in effect until (state duration of recusal).

c: subordinates responsible for screening communications
Ethics Liaison Officer
State Ethics Commission

APPENDIX J

State Ethics Commission Position on Privatization Issues

At its December 7, 1994 meeting, the State Ethics Commission considered whether State employees could, under the application of section 19 of the Conflicts Law, participate in an open competitive bid process for the privatization of services currently being provided by their agency and, if successful, could operate the service under the application of section 17.

Application of Section 19: Section 19 prohibits a State officer or employee from entering into a contract, valued at $25 or more, with any State agency. This prohibition also extends to partners or any corporation which the State officer or employee controls or in which he owns or controls more than 1% of the stock. 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.

Each of these exceptions requires prior approval of the Commission.

Because the contract for the privatization of the program at issue will be made after public notice and competitive bidding, the Commission approved the employees' participation in the bid process. To deal with concerns expressed in past Commission cases regarding whether State employees could bid on contracts to be awarded by their own agencies, the Commission outlined several safeguards. These safeguards are intended to prevent perceptions of State employees gaining unwarranted advantages or using insider information.

In order to approve an employee's participation in an open competitive bid process for services being privatized by his/her agency, the Commission requires an affidavit to the Commission from the agency management specifying that the employee is not or has not been involved in the privatization decision and will have no involvement in the privatization process, e.g., development of the RFP and winding down of the State-provided service. The affidavit must also specify that the employee will have no involvement in the evaluation of bids. The Commission also requires that the agency maintain records identifying all individuals involved in the privatization process. This requirement will facilitate investigation of any future complaints charging an employee with the use of insider information.

The Commission recommends that the RFP contain a notice to all bidders that agency employees or former employees may be submitting proposals. The Commission also recommends the "blind" review of the proposals to the maximum extent feasible. This would involve identifying bidders only by numbers or letters and not by personal or corporate identity.

Application of Section 17: The post-employment restriction of the Conflicts Law prohibits a former State employee from representing, appearing for, negotiating on behalf of or providing information or services not generally available to the public to any person or party other than the State in connection with any specific cause, proceeding, application or matter in which he/she had substantial and direct involvement during his/her State employment.

The Commission has taken the position that privatized services that are no longer pending, active or on-going in the State agency that formerly provided the services are not "matters" within the scope of section 17.

The Commission is concerned that individuals who expect to have involvement in the privatized services not participate, while State employees, in the privatization decision and process because of the Conflicts Law provisions that prohibit employees from using their official positions to gain an unwarranted advantage (section 23(e)(3)), acting in their official capacities in matters where they have an interest that may impair their objectivity (section 23(e)(4)), acting in a way that might create the impression of a violation of the public trust (section 23(e)(7)) and using or disclosing information not generally available to the public (section 25). Thus, procedurally, the Commission requires that an employee express his/her intention to be involved in any private sector efforts in connection with the privatization to the agency's management and the Commission as soon as it is feasible so that appropriate steps can be taken to screen the employee from the agency's privatization activities.

The Commission will require notice that the employee was not involved in the privatization decision or in the privatization process, e.g., preparation of the RFP, review of bids, evaluation of potential providers. The agency will be required to maintain records identifying all employees involved in the privatization process.

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APPENDIX K

GUIDELINES REGARDING RETIREMENT GIFTS

These guidelines address the circumstances under which appropriate recognition can be given to retirees from State service without exceeding the bounds of propriety or giving rise to an impression of violation of the public trust.

Typically, retirement functions comprise a get-together, with or without a meal, and the presentation of a gift or monetary token to the retiree, to his or her spouse, and/or to his or her dependent(s). In planning such events, the responsible group or individual must choose between two approved alternatives with regard to funding and the value of any and all gifts to be presented.

1. Gifts may be funded by a maximum contribution of $5 per person, collected from invitees to the retirement function. If this method of funding is used, no maximum value is set for the cost of the gifts, but contributions of more than $5 per invitee are not permitted.

or

2. The maximum value of retirement gifts cannot exceed $1,000. If this method is used, there is no maximum set on individual contributions, but the total value of retirement gifts and/or monetary tokens to the retiree, spouse, and dependent(s) cannot exceed $1,000.

If, instead of presenting gifts and/or monetary tokens to the retiree, spouse, and dependent(s), a decision is made to make monetary contribution to a qualified organization (under I.R.S. Code 501(c)(3)), no limit is placed on the maximum value of the contribution.

Retirement gifts from parties with whom the employee has had involvement in his/her official capacity are permissible provided the gift is not excessive or inappropriate for the purpose for which it is given.

Any questions about these guidelines or their implementation should be addressed to:

State Ethics Commission
28 West State Street
Room 1407 – P.O. Box 082
Trenton, New Jersey 08625
(609) 292-1892

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APPENDIX L

PUBLISHED WORKS

The State Ethics Commission staff frequently receives inquiries regarding State employees' activities in connection with authoring and publishing research papers, articles and books. The Commission has addressed these situations over the years, primarily under the application of sections 23(e)(1), direct or indirect financial or other interest; 23(e)(5), impairment of objectivity and independence of judgment; 23(e)(7), the appearance of impropriety; 24, receipt of compensation for a matter related to official duties; and 25, disclosure or use for personal gain of information not available to the public. Subsequent to March 1997, the Commission has also considered such inquiries under *N.J.A.C.* 19:61-6.7(b), compensation for published works.

Section 23(e)(1) of the Conflicts Law provides:

> No State officer or employee or special State officer or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

Section 23(e)(5) of the Conflicts Law provides:

> No State officer or employee or special State officer or employee should undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties.

Section 23(e)(7) of the Conflicts Law provides:

> No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State officer or employee or special State officer or employee.

Section 24 of the Conflicts Law provides:

> a. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence

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> expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.
>
> b. A State officer or employee, special State officer or employee, or member of the Legislature may, in connection with any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, solicit, receive or agree to receive, whether directly or indirectly, from sources other than the State, the following:
>
> (1) reasonable fees for published books on matters within the officer, employee, or member's official duties…

Section 25 of the Conflicts Law provides:

> No State officer or employee, special State officer or employee, or member of the Legislature shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties. No State officer or employee, special State officer or employee, or member of the Legislature shall use for the purpose of pecuniary gain, whether directly or indirectly, any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties.

N.J.A.C. 19:61-6.7, Compensation for Published Works, provides:

> (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 Governing Outside Activities, 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;

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(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) Except as provided in (e) below, the State official shall not use his or her official title in any way in soliciting compensation.
(e) A State official acting in a scholarly capacity may accept compensation for published works created as part of his or her official duties on State time utilizing State resources.

Summarized below are Commission cases dealing with published works.

In Case No. 255-75, the Commission considered whether employees of the Public Broadcasting Authority ("PBA") could receive a compensation fee for journalistic work used on a commercial station. Various journalists employed full-time by the PBA were approached for the use of news items that they wrote during the hours that they were employed by the State. These scripts, films or tapes were being used on commercial TV channels. The commercial stations wished to compensate the journalists for the use of their work.

The Commission determined that it would be a violation of section 24 of the Conflicts Law for State employees to receive compensation from any source other than the State for news items created as part of their official duties.

In Case No. 402-76, the Commission considered whether a professor at a State college was permitted, under the Conflicts Law, to receive payment of royalties for a book he published prior to his State employment and for an instructional manual to be used in conjunction with the book. The instructional manual was authored by him during his State employment.

Prior to his State position, while employed at a New York university, the professor devised a method to teach philosophy to elementary school children and authored a book on the topic. Two years after the professor joined the State college, the Board of Trustees formed the Institute for the Advancement of Philosophy for Children ("IAPC") as a means of further research and curriculum development for the purpose of training elementary school teachers to teach philosophical thinking to children. The professor was appointed Director of the IAPC.

The Commission determined that it would not be a violation of the Conflicts Law for the professor to receive royalties from the original book, written materials related to the original book or future materials authored on the subject of the development of philosophy in the elementary grades. This decision was based on the fact that the State college did not have a specific policy governing receipt of royalties for published works written by faculty members during their employment with the college. The agreement between the professor and the State college to act as Director of the IAPC did not provide that he author any publications in connection with this topic. The Commission thus determined that writing the instructional

manual and any future curriculum materials related to this issue could not be said to be related to his official duties. The professor was advised that, in his official capacity, he could not encourage the purchase of any materials that he authored.

In Case No. 427-76, the Commission considered whether the Deputy Director, Division of Field Services, Department of Education, could collect royalties from a book which he co-authored, with his wife, on the subject of communicating with hearing impaired and autistic individuals. Prior to his employment with the State, the Deputy Director had been associated with a school for the deaf in another state.

The Commission determined that the State employee was permitted to collect royalties from the sale of the book because the subject matter was unrelated to his official duties and he had no authority or control over the education of hearing impaired or autistic children. The State employee was advised that he could not promote the sale of the book to entities in New Jersey.

In Case No. 601-77, the Commission determined that it would not be a conflict of interest for the Chief Engineer, Operations and Local Aid, DOT, in his private capacity, to write an article on transportation systems to be contained in a book entitled "Focus on New Jersey: Problems and Prospects," to be published by a private publisher. In his official capacity, the employee functioned as a traffic engineer designing roads for counties and municipalities. The employee was well known in his field and as a result had given lectures in approximately 50 universities throughout the country on the topics of highway safety and highway traffic.

In Case No. 1028-82, the Department of Education requested that the Commission review the outside activities of three Department employees. The three employees were approached by an entity that received funding from the Department to assist in the production of a multi-cultural handbook to be used in teacher training. The Department was responsible for appointing the Board of Directors of the outside entity and provided funding for administrative purposes. The State employees' Division used the facilities of the private entity for training workshops. The project in question was being funded by a federal grant. All three employees' official responsibilities included the development of instructional programs for students not proficient in English.

The Commission found that a potential for an appearance of a conflict existed because the State employees dealt with the private entity in their official capacity and were involved with essentially the same subject matter in both positions. The Commission also advised the Department that the private entity should have solicited assistance from the Department rather than directly approaching the State employees.

In Case No. 1160-83, the Commission considered whether a Teacher, Adult Basic Education Program, New Lisbon State School, Department of Human Services, was permitted to publish a cookbook written on her own time. In her official capacity, the State employee was responsible for teaching home economics and nutrition programs to the adult developmentally disabled population at New Lisbon State School. The cookbook was a pictorial cookbook/teachers guide for non-readers and the handicapped. The development of the

cookbook was not part of the employee's official duties and responsibilities. She was advised not to make use of the cookbook in her classes after it appeared in published form.

In Case No. 1186-83, the Commission considered whether Coordinator III, Office of Equal Educational Opportunity, Department of Education, was permitted to publish a book entitled "Analogies and Black History," developed and financed by him for the purpose of assisting minority students in taking college entrance exams. The publication was not developed as part of his official duties, although part of his official function was to conduct black history in-service courses. At the meeting where this matter was considered, the Commission's Counsel at the time indicated that State employees may receive reasonable compensation for published works so long as they are not directly compensated by the State for those same works. Counsel explained that State employees would not be permitted to receive compensation if they were designated to prepare a book for the State as part of their official duties.

The Commission permitted the publication but placed the following restrictions on the employee. He could not conduct any field testing of his material within the area of his geographic assignment; he could not directly promote, advertise or solicit sales of his book to any State employee or any person with whom he had or may have official

dealings; he could not contract to sell these materials to the State of New Jersey unless in compliance with section 19 of the Conflicts Law.

In Case No. 3-84, the Commission found that the Supervising Program Development Specialist, Bureau of Research, Division of Youth and Family Services ("DYFS"), Department of Human Services ("DHS"), could not accept a cash award from a gerontological society for a paper prepared by him as a DYFS employee.

The DHS was awarded a grant to study abuse of the elderly. Because of his experience in the field of gerontology, the State employee was assigned the task of preparing a paper on the subject as part of his official duties. The paper was prepared entirely on State time with grant monies administered by the State. The State employee then submitted the paper for consideration for an annual research award and was the recipient of that award. The Departmental Ethics Review Board concluded that the acceptance of the cash award was violative of the Department's Code of Ethics. The Commission noted that the employee had solicited the award and affirmed the DHS' determination. The State employee appealed the Commission's decision to the Superior Court, Appellate Division, which upheld the Commission's determination.

In 1997, the Department of Law and Public Safety requested an opinion as to whether a Division of Law Deputy Attorney General ("DAG") was permitted to co-author a book about psychics and the paranormal, Case No. 3-97. The DAG wanted to write the book in her private capacity and use her married name (she is known by her maiden name in her employment with the Department). The Commission determined that the DAG was permitted to co-author the book under the following conditions: that she not refer to her status as a DAG or member of the Department; that she not permit the use of her title or employment in connection with publication

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or promotion of the book; that she not write about an active case or use information not generally available to the public; that she avoid any legal analysis that could be interpreted as Division of Law work product; that she not use State time or resources in connection with her outside activity.

In Case No. 34-96, Assistant Director, Division of Administrative Rules ("DAR"), Office of Administrative Law ("OAL"), and Case No. 35-96, Assistant Director, Judicial Standards and Procedures ("JSP"), OAL, the employees requested an opinion regarding outside employment. They were co-authors of an annual update of the Administrative Law Volume of the New Jersey Practice Series published by West Publishing Company ("West"). The matter at issue was the pocket part which updates the main text. West paid royalties to the employees.

West was an "interested party" under the Commission's rules. West did business with the OAL in two ways: it was the sole supplier of law library materials and also had the exclusive license to publish the New Jersey Register and the New Jersey Administrative Code. The OAL formerly produced these materials. West had a 7-year contract with three 1-year extensions which could be exercised at the State's option. The JSP Assistant Director had no involvement with West in any of its OAL dealings. The DAR Assistant Director had official contact with West regarding the license agreement.

As to the JSP employee, the Commission determined that she was permitted to engage in the outside employment. Under the Commission's rules governing compensation for published works in effect at the time, State employees were flatly prohibited from accepting compensation from an interested party. West was an interested party, but after reviewing all of the facts and circumstances, the Commission determined that her arrangement with West did not do violence to the intent of the rule. The Commission noted that the intent of the interested party provision was to prevent any influence by a discretionary vendor. This did not appear to be the situation in her case.

West was a sole-source provider, and she would not be able to influence any decision regarding West. The royalties were not subject to negotiation; there was a formula based on the sale of the books.

As to the DAR employee, the Commission determined that his co-authorship did not constitute a conflict with his official duties and permitted the outside employment, subject to the condition that he recuse himself from any actions in connection with contract renewals or re-bidding at the conclusion of the current 7-year contract.

The Commission determined that the interested party prohibition was overly broad. Subsequent to the two decisions, in March 1997, the Commission proposed and adopted the current provision regarding compensation for published works. Under the amended rule, *N.J.A.C.* 19:61-6.7, the fact that compensation is from an interested party does not automatically preclude acceptance of compensation, but is only one of a number of factors to be considered.

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In Case No. 17-98, a Principal Environmental Specialist, Department of Transportation, requested an opinion from the Commission as to whether he was permitted to author a book on New Jersey archeological sites to be published by Rutgers University Press ("RUP"). Rutgers University is a State agency for the purposes of the Conflicts Law, and RUP is fully integrated into the University. The employee's proposed outside activity raised a number of issues: the use of DOT archeological reports prepared by the employee or consultants supervised by him, the receipt of compensation for published works based on these reports, and contracting with Rutgers, a State agency.

The Commission determined that the use of DOT archeological reports in connection with the proposed published work appeared to be approvable under *N.J.A.C.* 19:61-6.7 and section 25 of the Conflicts Law. While there was no precedent directly on point, the Commission noted that State employees have been permitted to accept compensation for published works on subject matters related to their official duties. While the employee's activity was approvable under the rules governing published works and under section 25 of the Conflicts Law, the Commission determined that he was prohibited under section 19 of the Conflicts Law from undertaking or executing a contract or agreement for $25 or more with RUP.

In Case No. 34-98, the Commission determined that the Managing Actuary, Division of Life and Health, Department of Banking and Insurance ("DOBI"), was permitted to co-author and market a study guide utilized by students preparing to take the Society of Actuaries ("SOA") professional examination under the Commission's rules, precedent, the Conflicts of Interest Law and the DOBI Code of Ethics.

The employee co-authored the study guide in 1995 while on the faculty of Temple University. The examination contains ten segments; the study guide deals with only one particular segment of the exam. The book previously identified the employee as a faculty member at Temple, but new copies identify him only by name and give no indication of his current employment with the DOBI. The authors distribute approximately one third of the books themselves through direct mail; they purchased an advertisement which is distributed with materials sent by the SOA to all exam registrants. The remaining two thirds of the book are sold through several mail order books stores that specialize in actuarial books. The study guide is used by student actuaries; the majority of them are employees of insurance companies or actuarial consulting firms. Some students are employed by insurance companies and are reimbursed by their employers when they purchase books; insurance companies also purchase the study guide directly.

In approving the activity, the Commission took into account the following factors: the study guide is sold nationally and not just to New Jersey exam registrants, the employee co-authored the book while at Temple, uses only his name and not his official title in connection with the study guide and does not directly solicit regulated entities.

Summary. Under the rule addressing compensation for published works, *N.J.A.C.* 19:61-6.7, and under Commission precedent, a State employee not acting in a scholarly capacity may accept compensation for published works under the following conditions.

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- There is no prohibition governing such activity in the Department's enabling legislation or Code of Ethics.

- The State employee must obtain prior approval from his/her Department head.

- The published work must not use or disclose information not generally available to the public.

- The State employee must not use State time or resources in connection with the published work.

- The State employee must not use his/her official title in connection with publication or promotion of the published work.

- The State employee cannot promote, advertise or solicit sales of the published work to co-workers or individuals with whom he/she has official dealings.

- The State employee may not contract to sell the published work to the State except in compliance with section 19 of the Conflicts Law.

- The published work must not have been prepared as part of the State employee's official duties.

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APPENDIX M

OFFICIAL INTERACTIONS WITH FAMILY MEMBERS/COHABITANTS AND DATING RELATIONSHIPS

The State Ethics 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. Prior to 2006, the New Jersey Conflicts of Interest Law, *N.J.S.A.* 52:13D-12 et seq., did not contain an anti- nepotism provision. However, the statute was amended, effective March 15 2006, to prohibit certain relatives of certain State officials from holding particular governmental positions and also to prohibit State officials from supervising, or exercising authority with regard to personnel actions over, a relative of the State official.

N.J.S.A. 52:13D-21.2 provides:

> a. (1) A relative of the Governor shall not be employed in an office or position in the unclassified service of the civil service of the State in the Executive Branch of State Government.
>
> (2) A relative of the commissioner or head of a principal department in the Executive Branch of State Government shall not be employed in an office or position in the unclassified service of the civil service of the State in the principal department over which the commissioner or head of the principal department exercises authority, supervision, or control.
>
> (3) A relative of an assistant or deputy commissioner or head of a principal department in the Executive Branch of State Government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the assistant or deputy commissioner or head serves, but shall not be assigned to a position over which the assistant or deputy commissioner or head exercises authority, supervision, or control.
>
> (4) A relative of a head or assistant head of a division of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the head or assistant head of a division serves, but shall not be assigned to a position over which the head or assistant head exercises authority, supervision, or control.

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> b. (1) A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State shall not be employed in an office or position in that independent authority, board, commission, agency or instrumentality.
>
> (2) A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency shall not be employed in an office or position in that bi-state or multi-state agency, to the extent permitted by law.
>
> c. A State officer or employee or a special State officer or employee of a State agency in the Executive Branch shall not supervise, or exercise authority with regard to personnel actions over, a relative of the officer or employee.
>
> d. As used in this section, "relative" means 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 individual or the individual's spouse by blood, marriage or adoption.

Attorney General Opinion 06-0006 addresses the issue of the application of the anti-nepotism provision, *N.J.S.A.* 52:13D-21.2, to previously hired employees and advises that a State employee is not required to be terminated when a relative is subsequently appointed to a high level position within the agency. However, arrangements must be made to prohibit the relative's involvement in the exercise of authority, supervision, or control with regard to the incumbent holder of the affected State office or position.

The casino-related provisions of the Conflicts Law also 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. It should be noted that these cases were decided prior to the March 2006 Nepotism amendment.

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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.

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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.

STATE PROGRAMS

In Case No. 30-04, the Commission reviewed an allegation that an Assistant Commissioner, Department of Personnel ("DOP"), used her official position to attempt to place her nephew in the Pilot Program of a course developed by the DOP's Human Resource Development Institute ("HRDI") to prepare individuals to take the Law Enforcement Examination. The Assistant Commissioner's responsibilities included oversight of the HRDI.

The Commission determined that there were indications that the Assistant Commissioner violated sections 23(e)(3) and (7) of the Conflicts Law and authorized the drafting of a complaint. The Assistant Commissioner entered into a consent order with the Commission and agreed to a civil penalty of $750.

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.

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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.

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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 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

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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.

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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 State Ethics Commission, 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 State Ethics Commission, 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) and (d) address casino-related post employment restrictions. See appendix H for a discussion of these restrictions.

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CODES OF ETHICS

Codes of Ethics specific to a particular agency may also contain provisions applicable to family members. 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 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

2006 Nepotism Amendment. The Conflicts Law was amended, effective March 15, 2006, to prohibit certain relatives of certain State officials from holding particular governmental positions and also to prohibit State officials from supervising, or exercising authority with regard to personnel actions over, a relative of the State official.

Commission Precedent. 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

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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 State Ethics Commission. 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.