



REPORT OF THE SPECIAL ETHICS COUNSEL TO THE  
GOVERNOR OF THE STATE OF NEW JERSEY

ETHICS REFORM RECOMMENDATIONS FOR THE EXECUTIVE  
BRANCH OF NEW JERSEY GOVERNMENT

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and on-line at [http://www.nj.gov/ethics\\_report.pdf](http://www.nj.gov/ethics_report.pdf)

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### *Dedication*

*This Report is dedicated to all those who labor in the trenches of public service. Our research, interviews, and analysis of the ethics audit responses left us with an indelible impression of firm resolve on the part of State employees to serve the public honestly and faithfully. More than anything, we must reinforce their resolve by demonstrating that every level of government supports their efforts.*

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*We are grateful for the wisdom shared by esteemed leaders, policy-makers, and ethicists from across the nation, including former Governors Brendan Byrne (who serves as Chair of ECES), Thomas Kean, James Florio, Christine Todd Whitman, and Donald DiFrancesco, State Treasurer John McCormac, State Commission of*

*Investigation (SCI) Chair Cary Edwards, Legislative Counsel Albert Porroni, Director of Purchase and Property Jack Naiman, Director of Corporate Compliance Garry Tarino, Administrator of Law and Public Safety Thomas O'Reilly, retired New Jersey Supreme Court Justices Alan B. Handler and Stewart G. Pollock, Commissioner of the Department of Community Affairs and Vice-Chair of ECES Susan Bass Levin, ECES Commissioners Sharon Anne Harrington, James Keefe, William Librera, and Seema Singh, Professor and Senator Wilfredo Caraballo, Professor and Senator Robert Martin, former Attorney General John Farmer, former First Assistant Attorney General Janice Mintz, former Public Advocate and ECES Commissioner Zulima Farber, former Counsels to the Governor Michael Cole and William Harla, former State Treasurers Clifford Goldman and Michael Horn, Office of Management and Budget Director Rich Keevey, Dr. Fred Herrmann, Executive Director of the Election Law Enforcement Commission (ELEC), Nedda Massar, Esq., Counsel to ELEC, Harold Rubenstein, Executive Director of the New Jersey State Bar Association, Congressman Peter W. Rodino, David Freel of the Ohio State Ethics Commission, Mary Anderson, Inspector General of Illinois, Professor John Barrett of St. John's Law School, Professor Patricia Salkin of Albany Law School, Rochelle Rubin, Connecticut's Special Counsel for Ethics Compliance, Harry Pozycki and Lauren Skowronski of Common Cause, Ingrid Reed of the Eagleton Institute, Michael Josephson, Director of the Josephson Institute for Ethics, Stuart Gilman, President of the Ethics Resource Center, and John Contino, Executive Director of the Pennsylvania Ethics Commission.*

*We gratefully acknowledge the meaningful responses that we*

received to our Ethics Audit and to our requests for public comment.

During our review, we often asked, "What is the cornerstone of good government?" Hard-working citizens of our State, like Herbert Bashir of Irvington, said, "We need a return to honesty, to concern for the public trust." Don Wisnowski, a former serviceman and resident of Little Falls, said, "At every level of government, many leaders have lost sight of the reason why they're there and of the values that this country was founded on. I'm heartsick about this, because I love our State." Bob Loughrey, proprietor of Uncle Bob's Ice Cream Shop in Cedar Grove, said, "Ethics in government means that our leaders should be doing the right thing for the people, not for themselves. We want them to do the right thing, not necessarily the popular thing."

These acknowledgments are not all-inclusive. Undoubtedly, we have inadvertently omitted the names of some individuals who should be acknowledged. We thank all contributors, and all who care deeply about the task of ethics reform.

Trust is the cornerstone of good government. By restoring public trust, we can, in the words of Acting Governor Codey, "show government as a force for compassion and a beacon of hope." The time is now.

## INTRODUCTION

*Our faith in government has been shaken. But this moment in history has given us the opportunity to chart a new course. Together, we have begun to restore faith, integrity, and hope to our government. . . . There is nothing more important to our democracy than the trust of the citizens. And when that trust wavers, the question is not whether we should act . . . but how much we can achieve.*

- Acting Governor Richard J. Codey,  
State of the State Address  
(January 11, 2005)

On November 17, 2004, Acting Governor Richard J. Codey appointed us Special Ethics Counsel, charged with the responsibility of recommending ethics reforms for the Executive Branch of New Jersey's Government. We commend Governor Codey for his leadership and courage in giving us so significant a mandate and we thank him for this opportunity to serve the State.

Although our mandate is broad, it is not all-encompassing. Our work is part of a larger mosaic of effort by public and private-sector parties. An effective system of advancing integrity in government requires a tripartite approach. The three major features recognized in most jurisdictions are: (1) the regulation of legislative and executive lobbying; (2) rules of conduct for government officials; and (3) campaign and finances practices. Our mission is limited to the second element, the rules of conduct for members of the Executive Branch of State government and its independent authorities. The other two pillars of integrity must be strengthened as well.

In pursuit of our mission to examine the rules of conduct governing State employees, we thoroughly reviewed the State's existing ethics and conflicts laws. We also conducted an extensive audit of ethics programs in the Executive Branch agencies, departments, and independent State authorities. In addition, we engaged in a comparative review of other state and federal ethics models, conducted numerous interviews, and solicited and reviewed public comment.<sup>1</sup> Our research, interviews, and analysis of the ethics audit responses left us with the indelible impression of firm resolve on the part of State employees to serve the public honestly and faithfully. They deeply resent any outside influences on the performance of their duties. More than anything, we must reinforce their resolve by demonstrating that every level of government supports those in the trenches of public service.

Our Report proceeds on the simple principle that public office is a public trust. Recent scandals have shaken that trust. Yet, as Governor Codey has made clear, this unique moment in New Jersey's history has provided the opportunity to chart a new course that transcends partisanship and recaptures the promise of our great State.

The public wants and deserves assurances that it can rely on the integrity of its elected and appointed leaders. Citizens want

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<sup>1</sup> In the course of our investigations, we received several recommendations for ethical reform that were beyond the scope of our mandate. We do not include our comments on such matters in this Report, but will shortly submit a separate report to the Governor on those issues, considered but not recommended to be part of this Report.

and deserve evidence that leaders are making an ethical culture the central hub of governance. They want leaders who will guide managers at all levels to do the right thing when faced with tough decisions. They want to see less partisan politics and more public interest politics.

The Report that we issue today sets forth a series of sweeping recommendations that include the creation of a newly-empowered and independent watchdog, to be known as the State Ethics Commission, significant enforcement and compliance checks, stringent penalties for transgressors, mandatory ethics training for all State officials and employees, routine ethics auditing, more stringent anti-nepotism laws, more effective post-employment restrictions, transparency in the contracting process, a zero-tolerance policy on the acceptance of gifts, and the imposition of the ethics laws upon gubernatorial transition teams. The public interest deserves no less.

Throughout, our recommendations aim to promote transparency and accountability in all aspects of government activity in order to better monitor ethical performance from top to bottom. As Justice Brandeis observed, "Sunlight is said to be the best of disinfectants." Louis Brandeis, Other People's Money 62 (Nat'l Home Library Found. ed. 1933).

Moreover, experience teaches that it is not enough to impose strictures on State employees. Most ethics violations do not occur without the participation and consent of third parties. Hence, we

have prepared a Business Ethics Guide, (Exhibit C), for third parties that do business with the State. We recommend that certification of compliance with its terms be required of all parties that do business, or hope to do business, with the State.

We are not so naive as to believe that our recommendations will change human nature. No regulation will deter a person determined to challenge the public interest and public trust. Still, formal rules that establish clear standards regarding performance and punishment are essential to communicate that transgressions will not be tolerated and that ethics is everyone's business.

Thomas Jefferson warned, "In every government on earth there is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover and wickedness insensibly open, cultivate, and improve. Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories." Thomas Jefferson, Notes on the State of Virginia (Merill D. Peterson, ed., Library of Am., Literary Classics of the United States 1984) (1781-1782). Although our recommendations are significant, without a commitment that survives the current climate of ethics reform all that we will have succeeded in doing is putting more laws on the books. Ultimately, it is human oversight, rooted in leadership from the top and an unrelenting pledge to good government, that serves as the most effective and enduring check.



Implementing the systemic changes that we recommend can help to set the stage for a renewed partnership of government, its employees, and the public. By rebuilding the public's trust, we can, in the words of Governor Codey, "show government as a force for compassion and a beacon of hope." Restoring a sense of nobility and accountability to government service is vital to this enterprise. When public employees come to believe that they and their work are unseen or unimportant, a window of vulnerability opens. We are convinced that the recommendations in this Report and the continuing leadership that this initiative represents have the potential to close, or at least narrow that window, and open a door back to the future, so that New Jersey can reclaim its great promise.

## SUMMARY OF PRINCIPAL RECOMMENDATIONS

### 1. CREATE AN ENTIRELY NEW, INDEPENDENT AND PROACTIVE ENFORCEMENT AGENCY, CALLED THE "STATE ETHICS COMMISSION" (COMMISSION).

#### A. Make The State Ethics Commission An Independent Watchdog.

The new State Ethics Commission should replace the existing Executive Commission on Ethical Standards (ECES). To ensure maximum independence:

- The State Ethics Commission should be bipartisan and, ultimately, be composed entirely of seven public members.
- Commission members should serve staggered four-year terms.
- The Commission's Chair and Vice-Chair should be elected by its members to two-year terms.

Governor Codey has proposed legislation that would transform the newly-named State Ethics Commission from a nine-member body, with seven members from the Executive Branch and two public members, into a seven-member body, with three members from the Executive Branch and four public members. Not more than two of its public members would be of the same political party, and a Chair would be selected from among its public members. Several of our recommendations are embodied in that Bill. Given the strength of the Governor's commitment to ethics reform, this movement toward change should pave the way for the implementation, over time, of an entirely independent body composed of seven public members, while also assuring a smooth transition toward that end.

**B. Vest The State Ethics Commission With Much Greater Enforcement Powers Than Those Possessed By The Existing Executive Commission On Ethical Standards.**

Presently, many of the State's ethical strictures are well intended, but toothless. The new State Ethics Commission should be vested with vigorous enforcement mechanisms, as well as with the responsibility for undertaking routine ethics audits and for implementing mandatory ethics training programs. It should have the authority to impose a broad range of significant penalties for non-compliance and ethics violations. The range of penalties should include:

- Removal from office.
- Suspension from office.
- Demotion.
- Public censure.
- Reprimand.
- Restitution of any pecuniary benefits received as a result of an ethics violation.
- Mandatory late filing fees (up to \$50 per day) for failure to file required disclosure and authorization forms in a timely manner.
- Mandatory civil penalties (up to \$10,000 per violation) for violations of post-employment restrictions.

Further, the Commission's jurisdiction should be expanded to include transgressors who leave State service, provided the Commission's investigation begins within two years past the date on which the alleged violation has been committed. That expanded

jurisdiction would prevent State employees from escaping liability for ethical breaches simply by leaving State employ.

Finally, the Commission will have to coordinate its work closely with the Inspector General's Office, the State Auditor's Office, the State Commission of Investigation, and the Office of Government Integrity in the Attorney General's Office.

**C. Require The State Ethics Commission To Conduct Mandatory Ethics Training For All State Employees.**

The State Ethics Commission should be staffed with a full-time Training Officer with adequate support personnel, charged with the responsibility of creating, coordinating, and refining comprehensive mandatory ethics training programs, both in-person and on-line. Each agency or department's Ethics Liaison Officer (ELO) should be required to coordinate with the Training Officer to facilitate the ethics training programs that the Training Officer develops.

Mandatory ethics training programs should include:

- Annual briefings and routine refresher courses on ethics and standards of conduct for all State employees and officers.<sup>2</sup>
- Annual financial-integrity training for all State officers, board members of all State entities, and employees vested with procurement-related authority.

**D. Enable The State Ethics Commission To Perform Regular And Systematic Ethics**

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<sup>2</sup> References throughout this Report to State "officer" or "employee" refer to any person holding office or employment in any State agency, i.e., any principal department, board, commission, authority, State college or university and any other instrumentality, created by or allocated to a principal department.

**Audits And Monitoring For Ethics  
Compliance.**

The State Ethics Commission should be staffed with a full-time Ethics Compliance Officer and adequate support personnel to ensure that, in each agency, all required employee disclosures are monitored for compliance and all ethics codes and notices are distributed to and acknowledged by all employees. Duties of the Ethics Compliance Officer should include:

- Tracking compliance on matters including outside employment, business activities, gifts, financial disclosures, contacts by legislators, lobbyists, or governmental-affairs agents, procurements and contracts, and attendance at outside events.

**E. Coordinate The Duties Of The State Ethics  
Commission With Those Of Other Agencies  
Charged With Fighting Fraud, Waste, And  
Ethical Misconduct In Government.**

The Commission should routinely communicate and coordinate its efforts with those of the State Auditor, the Inspector General, the State Commission of Investigations, and the Office of Government Integrity of the Attorney General's Office. Just as there are joint task forces of state and federal agencies to fight crime or pollution, there can and should be a joint task force of the several agencies to fight fraud, waste, and ethical misconduct in government.

**F. Improve Access To Ethics Advice and  
Information.**

To improve access to ethics advice and information, we

recommend that:

- A new, toll-free, confidential reporting hotline be made available to all State employees and to the general public, for purposes of voicing concerns, asking questions, and making complaints.
  - All financial disclosure forms be viewable on the Commission's website.
2. **ENACT A UNIFORM ETHICS CODE, APPLICABLE TO ALL STATE EMPLOYEES, TO CONSOLIDATE THE STATE'S SCATTERED ETHICS LAWS INTO A SINGLE ACT.**

Currently, State ethics restrictions are set forth in a multitude of separate codes and in the regulations of a myriad of diverse agencies. Uniform baseline standards of conduct should be enacted and made applicable to all State employees. Our proposed Uniform Ethics Code, appended as Exhibit A, simplifies, clarifies, and modernizes the otherwise disparate governing strictures. Our recommendation requires:

- The State Ethics Commission to promulgate a single Code of Ethics binding upon the Executive Branch, that adopts all applicable provisions of our proposed Uniform Ethics Code, as supplemented by relevant agency-specific strictures.
3. **IMPLEMENT A PLAIN LANGUAGE ETHICS GUIDE THAT CAN BE EASILY UNDERSTOOD BY ALL STATE EMPLOYEES AND THE PUBLIC.**

A Plain Language Ethics Guide should be adopted to explain clearly and plainly to all State employees and to the public the ethical standards and requirements that must be met by every State employee. We have drafted, and append as Exhibit B, a Plain Language Ethics Guide that reflects the current New Jersey Conflicts of Interest Law (Conflicts Law), N.J.S.A. 52:13D-12 to -

28.

We recommend that:

- Every State employee be required to certify that he or she has read the Guide, understands it, and vows to uphold its terms. With that requirement in place, no employee will ever be able to use ignorance of the law as a viable defense to an ethics violation.
- 4. IMPLEMENT A BUSINESS ETHICS GUIDE THAT IS BINDING ON THIRD PARTIES THAT DO BUSINESS WITH THE STATE.**

It is not enough to impose strictures on State employees. Most ethics violations do not occur without the participation and consent of third parties. Hence, we have drafted, and append to this Report as Exhibit C, a plain language Business Ethics Guide for third parties that conduct business with the State. Currently, there are no penalties for businesses that commit ethics violations.

Our recommendations require that:

- All persons who do business with the State certify, in writing, that they understand the rules of the Business Ethics Guide and that they are in compliance with those rules.
  - A certification of compliance with the Business Ethics Guide be a prerequisite for the submission of any bid to do business with the State. Penalties for noncompliance would include disqualification of the bid.
- 5. PROVIDE LEADERSHIP FROM THE TOP.**

The Governor should set the appropriate tone and lead by example and initiative, to avoid even an appearance of impropriety.

Toward that end, we recommend that:

- The Executive Director of the State Ethics Commission meet with every new Cabinet member shortly after

inauguration.

- The Executive Director of the State Ethics Commission appear before the Cabinet at least once each year to remind all members of the ethics strictures.

The Governor's Code of Conduct, promulgated by an independent advisory panel pursuant to Executive Order 77 (McGreevey 2002), contains thorough and significant strictures, consistent with the core premise that leadership and direction must come from the top. The Governor's Code of Conduct is appended to this Report as Exhibit M.

**6. CLOSE THE REVOLVING DOOR OF UNDUE INFLUENCE BY ADOPTING RIGOROUS POST-EMPLOYMENT RESTRICTIONS AND EFFECTIVE FOLLOW-UP PROCEDURES.**

Presently, a general post-employment restriction prohibits a former State officer or employee, or special State officer or employee, from representing or acting on behalf of a party other than the State in connection with any matter in which the employee was substantially and directly involved during his or her State tenure. That is a lifelong restriction, but the only enforcement mechanism is a disorderly-persons penalty, which has never been invoked.

To construct laws that are stronger, realistic and readily enforceable, we recommend:

- A new explicit lifetime ban on all former State officers' and employees' use of confidential information.
- A general two-year post-employment restriction prohibiting a former State employee from representing an entity on a matter that he or she was substantially and



directly involved in while in State service. That ban would allow highly qualified individuals to enter government service with the expectation that they will be able to continue to earn a living after they leave State employ. Consistent with the experience of other jurisdictions, after two years, former State employees are apt to be sought by a new employer for their expertise, rather than for their ability to influence government officials.

- A new one-year ban on "side-switching," to apply to designated State officers, heads, deputy heads and assistant heads of principal departments, boards, commissions, and authorities. That ban would prohibit such an employee, for one year after leaving State service, from representing anyone on any matter before the agency in which he or she was employed. Our investigation revealed the significant concern about the appearance of impropriety that arises when a former senior official appears before his or her agency shortly after leaving government service.
- Greatly enhanced penalties for violating post-employment restrictions, applicable to former employees and their new employers. Those penalties should include fines of up to \$10,000 per offense.

#### **7. STRENGTHEN ANTI-NEPOTISM LAWS.**

The Legislature's 2004 enactment prohibiting certain relatives of State officials from serving in State government positions, N.J.S.A. 52:14-7.1, was a step in the right direction. Currently, however, there are no enforcement mechanisms or penalty provisions in the statute to ensure compliance. Therefore, we recommend the following:

- Make N.J.S.A. 52:14-7.1 part of the Conflicts Law, giving the State Ethics Commission the authority to impose a broad range of penalties for violations.
- Prohibit State officers and employees from participating in decisions to hire, retain, promote, or determine the salary of any member of their immediate family, and any cohabitant or person with whom the officer or employee

has a dating relationship.

- Prohibit every State officer and employee from supervising or exercising authority over immediate family members, cohabitants, or persons with whom the officer or employee has a dating relationship.

Those recommended strictures are delineated in our proposed Uniform Ethics Code (Exhibit A).

**8. IMPOSE THE ETHICS LAWS ON ADMINISTRATION TRANSITION TEAMS.**

The ethical responsibilities and obligations of a newly-elected State administration begin not on a governor's inaugural day, but on the very first day that a transition team is formed. Policies and operational and personnel decisions are forged during a transition. Consequently, the public trust is involved. Currently, transition teams are not subject to the ethics laws applicable to other Executive Branch employees. To increase public confidence, we recommend that all full-time, paid transition team members:

- Be subject to the constraints of the ethics laws immediately upon appointment, and that their salaries and sources of income be fully disclosed.
- Be notified of the ethics and conflicts laws and receive ethics training immediately upon appointment, and that they be required to certify, in writing, that they are in compliance with those strictures, including all financial disclosure requirements.

We also recommend that the Gubernatorial Transition Act, N.J.S.A. 52:15A-1 to -5, be amended to subject full-time, paid transition team members to the Conflicts Law.

**9. ENSURE TRANSPARENCY AND PROMOTE INTEGRITY IN THE CONTRACTING PROCESS.**

With certain amendments to expand its scope, we recommend that the Karcher-Scutari Bill, S. 2194, 211th Leg. § 2 (N.J. 2004), be enacted to implement the State Commission of Investigation's (SCI) June 2004 recommendation that, once a matter has entered the procurement process, any contact related to the procurement between State employees and representatives of active or prospective State vendors be memorialized in writing, so that a public record can be maintained to ensure the transparency of such contacts. In order to close the circle of improper influences in the bidding process, we recommend that all intra-government contacts with State procurement officers also be memorialized in writing.

**10. ADOPT A ZERO-TOLERANCE POLICY ON GIFTS.**

Last year, the Legislature passed a law allowing Executive Branch officials to receive up to \$250 total value in gifts, annually, from governmental affairs agents, thereby conflicting with current ECES guidelines. To eliminate confusion and to render even more rigorous the gift ban, we recommend:

- A new, simple, flat ban, prohibiting all Executive Branch employees from accepting any and all gifts or other things of value from any source other than the State for any matter related to their official duties. That zero-tolerance policy will establish a clear, bright-line standard that is easy to apply and helps to avoid even the appearance of impropriety.

**OVERVIEW OF REPORT**

This Report consists of three chapters and a comprehensive Appendix. Chapter One provides an overview of our methodology, a history of ethics reform in New Jersey, and a comprehensive discussion of existing Executive Branch ethics programs and strictures. Chapter Two contains a detailed analysis of the results of our Ethics Audit. Chapter Three provides a detailed consideration of each of our recommendations, together with national comparisons.

Our appendices include: (1) our proposed Uniform Ethics Code; (2) our recommended Plain Language Ethics Guide; (3) our proposed Business Ethics Guide; (4) our Ethics Audit survey; (5) ethics training prototypes; and (6) various compilations of State and national data relevant to the task of ethics reform.

**CHAPTER I:  
MISSION STATEMENT**

**1. Mission and Methodology.**

On November 17, 2004, Governor Codey signed Executive Order 3, appointing Special Counsel for Ethics Review and Compliance to "reassess the effectiveness of the ethical standards and training that guide the conduct of State officers and employees within the Executive Branch of government and the independent State authorities." (Exhibit D). Toward that end, the Governor ordered that we: (1) conduct and report the results of a comprehensive Ethics Compliance Audit to identify potential areas for improvement in the State's current ethics laws, regulations, codes, training programs, compliance monitoring, and enforcement; (2) present (a) a comprehensive Ethics Report recommending improvements to the current laws, and (b) a Compliance Plan mandating measures that must be adopted to improve and strengthen compliance with those laws; (3) develop and implement, in conjunction with the Executive Commission on Ethical Standards (ECES), an Ethics Training Program for Executive Branch and independent authorities personnel; and (4) review and recommend any appropriate changes to the requirements of Executive Order 10 (McGreevey 2002), and the Code of Conduct for the Governor.

In order to meet those mandates, we have conducted numerous, extensive inquiries. We examined every New Jersey Executive Branch department and agency, as well as each of the State's independent

authorities (collectively, authorities). We also surveyed all of New Jersey's relevant ethics laws and codes, federal and other states' analogues, and the ethics codes of a cross-section of corporate America.

We reviewed voluminous materials and research supplied by the Executive Director and Deputy Director of ECES and by the Office of Counsel to the Governor, as well as all legislative and regulatory sources with ethical dimensions compiled by the Office of the Attorney General. We interviewed current and former State officials to hear their views on the strengths and weaknesses of the ethical standards and processes currently in place in New Jersey. We met with and solicited the views of the Commissioners of ECES and the Ethics Liaison Officers.

We interviewed leading ethicists from across the nation, as well as officials charged with responsibility for ethics regulations and reform. We examined the statutory and regulatory materials of other states and the federal government and learned about their training and compliance strengths and weaknesses. We interviewed ethics personnel from other states and evaluated their programs, staffing, and budgetary resources. We reviewed model ethics laws and codes prepared by various associations and governmental organizations and assessed their applicability to New Jersey.

We collected and examined model codes and best practices from "think-tanks," major corporations, trade associations, and non-

profit organizations. We interviewed leaders and experts in the private sector with respect to standards, training, and compliance. We also solicited and considered feedback from the public, as well as from public interest groups dedicated to ethics in government.

## **2. Significance of Our Mission.**

More than other citizens, public employees and officials assume responsibility for protecting the rights and interests of all citizens. Public servants act in the name of, and on behalf of the public, in critical areas, such as health care, education, environmental protection, public safety, and defense. It is important for public employees and officials to see that work as a fiduciary trust. As such, public employees and officials must adhere to the highest standards of integrity in performing their official duties.

A commitment to integrity and faithfulness to fiduciary responsibilities need not be a burden for public servants. Rather, faithfulness to responsibilities can be a source of satisfaction, pride, and the very motivation for continued public service. While it is important for public employees and officials to recognize that public service is a responsibility, it is also a noble duty.

More often than not, media coverage of ethics in government focuses on unethical behavior by select individuals and on how to prosecute or "throw the rascals out." We have concluded that examining the underlying standards of ethical behavior and developing strategies for preventing abuses are equally important.

Therefore, our recommendations go beyond laws, rules, and regulations, to consider core values.

The words and ideals of our nation's founders provide guidance and inspiration in contemplating those values. For example, as the thirteen states were deciding whether to ratify the Constitution, James Madison and Alexander Hamilton attempted to allay widespread fears, skepticism, and suspicion of the new government. In their Federalist Papers, they encouraged the colonists to trust that government.

Federalist Paper Number 57 has particular relevance to our review of ethics in government because it addresses not just structural safeguards, but also the requirement that those who serve in government be people of wisdom and virtue who are dedicated to the common good, rather than to pure self-interest. Our Report does not attempt to provide new principles, but instead echoes the ideals that have provided strength to our nation since its founding. As Madison observed:

The aim of every political constitution is, or ought to be, first to obtain for rulers men [and women] who possess the most wisdom to discern, and the most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.

How successful have we been in meeting Madison's fundamental standards of wisdom, virtue, and effective precautions? In terms of ethics in government, our State and nation have made strides in



writing laws that set high standards. Unfortunately, those laws are sometimes flouted or betrayed.

Some notorious scandals, such as Watergate and Abscam, have had profound consequences for the nation and for our State. The 1972-1973 Watergate scandal resulted in numerous convictions of White House officials, and in the resignation of a President. That scandal created tremendous public interest in government ethics, and helped to spawn an array of reforms in campaign-finance and ethics rules, regulations, and laws in the federal, state, and local governments. Watergate also engendered the media's understandably more aggressive stance and jaundiced-eye toward ethics in government. At the state level, the FBI's 1978-1980 Abscam sting operation hit New Jersey particularly hard, triggering the resignations and bribery convictions of one of our United States Senators and two of our Congressmen. Throughout the past three decades, those and other instances of public corruption have compromised the public's trust in government.

Historically, New Jersey has launched significant efforts to combat corruption and to raise the public's trust in government.<sup>3</sup> For example, in 1968, during a period of increasing public attention to organized crime and political corruption, a Joint Legislative Committee to Study Crime and the System of Criminal Justice recommended the creation of an independent State Commission of Investigation (SCI) and a Division of Criminal Justice under the

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<sup>3</sup> For a more detailed discussion of anti-corruption efforts in New Jersey, see

supervision of the Attorney General.

In 1973, the Legislature created ECES to administer and enforce New Jersey's Conflicts Law. That same year, the Legislature also created a bipartisan Election Law Enforcement Commission, to administer the Campaign Contributions and Expenditures Act. That commission also administers New Jersey's public financing programs.

In 1974, Governor Brendan T. Byrne and the Legislature created the Department of the Public Advocate. Although that department was abolished in 1994, Governor Codey has called for its re-establishment, as part of a comprehensive plan to restore a higher level of integrity and accountability to New Jersey's Government.

In 1977, after the voters approved casino gambling in Atlantic City, the Legislature created the Casino Control Commission, to license and regulate casino gaming. That commission is an independent agency "in, but not of," New Jersey's Department of Treasury. The Casino Control Commission's task of regulating casino activities is shared with the Division of Gaming Enforcement, in the Department of Law and Public Safety.

The creation of those agencies has been extraordinarily important to New Jersey's effort to increase the public's trust and reduce crime and corruption. Unfortunately, however, crime and public corruption have not disappeared. In its September 1992 report, Local Government Corruption, the SCI inventoried 277

instances of corruption and found that, although corruption in New Jersey was not as open, notorious, and systematic as in the past, it was nevertheless still a serious and disturbing problem. Since 1992, the SCI has issued numerous reports exposing waste, fraud, and abuses in the public sector, in areas ranging from school busing, pensions, and computer crimes, to E-ZPass and the privatization of New Jersey's motor vehicle inspection services. In its motor vehicle inspection investigation, the SCI uncovered a privatization process that was thoroughly undermined by mismanagement and political manipulation.

We have carefully reviewed all of the above reports and conclude that today, as in 1968, New Jersey must move forward with decisive, systematic interventions that discourage wrongdoing and encourage ethical behavior at all levels of State government. We therefore recommend a number of significant statutory, policy, and operational reforms for New Jersey's Executive Branch.

We hasten to add that our focus on the State's ethics infrastructure of laws, codes, reporting mechanisms, and training should not divert the State's attention to the critical importance of effective leadership, auditing, internal controls, and civil and criminal investigations. Full trust and confidence in government can only be restored if the State constructs and maintains an ethics system built on integrity, good management, and an abiding commitment by public employees to the democratic ideals of impartiality, equality, equity, and service in the public interest.

Although most public employees would profess their commitment to those principles, their application may nevertheless vary, depending upon individual employees' understanding of those principles. Moreover, ethics decisions often present a seeming choice between two or more goods, causing confusion for individuals who are not adequately informed about our State's ethics requirements. The need for clarity in such situations makes confidential inquiries imperative, so that State employees may obtain advice whenever they are unsure whether their actual or contemplated conduct would be consistent with the State's ethics laws and codes.

A principal finding of our review is that, even if New Jersey enacts and implements the best laws and codes of ethics, those measures will be ineffective if the State fails to ensure that State officers and employees are aware of their fiduciary responsibilities and the ethical dimensions of their jobs. Attaining that goal will require a comprehensive ethics-training program for all State personnel, without exception.

During our review, we often asked, "What must be done to maintain high levels of sensitivity to the importance of ethical behavior in public organizations?" We are convinced that the answer begins with the integrity of leaders, dedicated to serving the public interest, and committed to instilling respect for the law.

We are also convinced that the State needs an improved,

comprehensive statute governing conflicts of interest — one that imposes strict penalties for violations. We have drafted that statute, our proposed Uniform Ethics Code, Exhibit A. It provides clear and reasonable restrictions. It goes beyond mere conflicts of interest, and emphasizes the fiduciary responsibilities of State officers and employees.

Finally, we are convinced that one of the most important issues in ethics reform is the need for an independent State Ethics Commission with responsibility to oversee the implementation and enforcement of the ethics laws and the authority to impose stringent penalties for violations of those laws. The Commission must continue to provide confidential dissent channels, to allow employees and others to bring anonymous complaints of ethical violations, without fear of reprisals.

Implementing the systemic changes that we recommend can set the stage for a new beginning by redefining the partnership of our government, its employees, and the public. Trust is the foundation of good government. By rebuilding the public's trust, we can, in the words of Governor Codey, "show government as a force for compassion and a beacon of hope." Restoring a sense of nobility and accountability of government service is vital to this enterprise. When public employees come to believe that they and their work are unseen or unimportant, a window of vulnerability opens. We are convinced that the recommendations in this Report have the potential to close, or at least narrow that window, and

open a door back to the future, so that our most sustaining democratic ideals can once again flourish.

### **3. Executive Branch and Current Ethics System.**

New Jersey's Executive Branch is comprised of the Governor and his staff, sixteen executive departments, and scores of agencies, boards, and commissions. The Governor, with the State Senate's approval, appoints the heads of each of those authorities. The authorities enforce the policies set forth by the Governor to fulfill his duty to faithfully execute the State's laws. One of those authorities, ECES, is specifically charged with implementing the Conflicts Law, N.J.S.A. 53:13D-12 to -28.

#### **A. Executive Commission on Ethical Standards.**

##### **(1) Creation, Powers, and Jurisdiction.**

More than 70,000 Executive Branch employees are currently subject to ECES' jurisdiction. The Commission was established in New Jersey's Department of Law and Public Safety in 1972 to administer and enforce the Conflicts Law. N.J.S.A. 52:13D-21(a), (h); N.J.A.C. 19:61-2.1(a). It also administers and enforces Sections 58 through 60 of New Jersey's Casino Control Act, N.J.S.A. 5:12-1 to -210, and administers Executive Orders 10 (McGreevey 2002), (Exhibit E), and 189 (Kean 1988), (Exhibit F), without enforcement powers. N.J.A.C. 19:61-2.1(a). The Commission's power with respect to the Conflicts Law's post-employment, casino-related, and inducement prohibitions is limited to rendering advice or making referrals to the Division of Criminal Justice, because

violations of those sections are disorderly-persons offenses that implicate up to six months' imprisonment, in addition to a \$500 fine. N.J.S.A. 52:13D-17, -17.2h, -26.

Within its jurisdiction to initiate, receive, and review complaints concerning alleged violations of the above laws and relevant authority codes, N.J.S.A. 52:13D-21(h), the Commission may carry out investigations and hold hearings, and may compel the production of papers and the attendance of witnesses, who may be examined under oath. N.J.S.A. 52:13D-21(f). The Commission may also render advisory opinions as to whether a particular set of facts and circumstances would constitute a violation of the Conflicts Law or any related code, rule, or regulation. N.J.S.A. 52:13D-21(g); N.J.A.C. 19:61-4.1. The Commission may seek the Attorney General's legal advice in rendering such opinions, N.J.S.A. 52:13D-21(d), it must file such opinions with the Office of Administrative Law (OAL), N.J.A.C. 19:61-5.2(a)1, and it may make such opinions available to the public. However, those opinions are only binding as to the particular facts and circumstances they address. N.J.A.C. 19:61-4.1.

## **(2) Investigations and Penalties.**

ECES receives allegations of violations from a variety of sources, either orally or in writing. Complaints can be made anonymously, and all complainants' identities are held in confidence, even if they choose to identify themselves to the Commission. Allegations may also be filed with a suspected

violator's employing authority, which must then file a copy of the complaint with the Commission. N.J.A.C. 19:61-3.4. The Commission, in its discretion, may direct the authority to transfer the matter to ECES. Ibid. If the matter is retained by the employing authority, the authority must file with the Commission any determination made after a hearing conducted pursuant to N.J.A.C. 19:61-3.1. N.J.A.C. 19:61-2.1(b). The Commission may then affirm, reverse, or modify that determination. Ibid. An authority's determination to discipline or remove a State employee from office takes effect only when approved by the Commission. N.J.A.C. 19:61-3.6.

When the Commission receives an allegation, its staff first determines whether the alleged conduct falls within the Commission's jurisdiction. N.J.A.C. 19:61-3.1(a). If the Commission is without jurisdiction, it notifies the complainant and, if possible, forwards the matter to the proper agency for further action. N.J.A.C. 19:61-2.3, -3.1(a)(2). If the Commission has jurisdiction, its staff conducts a preliminary investigation, which may include document review and interviews of the complainant, the alleged violator, and any other individual who may possess knowledge of the circumstances surrounding the alleged conduct. N.J.A.C. 19:61-3.1(b).

The Commission may compel the production of witnesses and documents, if need be, by issuing subpoenas enforceable through the Superior Court. N.J.A.C. 19:61-3.2. The Commission's interviews



are conducted under oath and are tape-recorded. An interviewee may be accompanied by an attorney or by a union representative, if desired, and may obtain a copy of his or her recorded interview, upon request, once the matter has been reviewed by the Commission.

All information gathered during a preliminary investigation remains privileged and confidential until the Commission has reviewed the staff's investigation report in closed session. N.J.A.C. 19:61-3.1(c). Such sessions are not formal hearings, and no witnesses appear. However, the subject of the investigation, his or her representative, and the relevant authority's ELO may attend the closed session, and may answer questions posed by the Commission. See N.J.A.C. 19:61-3.1(d).

If the Commission determines that the alleged violation did not occur, the allegation is dismissed in public session. N.J.A.C. 19:61-3.1(g). If the Commission determines that a violation may have occurred, a complaint is issued, and a due process hearing is scheduled before the Office of Administrative Law (OAL) or the Commission. N.J.A.C. 19:61-3.1(h). Due to the Commission's time constraints, such hearings are normally conducted before the OAL. Unless the subject and the Commission enter into a public consent agreement before those proceedings are concluded, a decision is issued within the time period prescribed by the Administrative Procedure Act. N.J.A.C. 19:61-3.1(i).

If the subject of the hearing is found to have violated any provision of the Conflicts Law or an applicable authority's code of

ethics, the Commission must impose a fine of between \$500 and \$10,000, and it may order the violator's suspension from office for up to one year. N.J.S.A. 52:13D-21(i); N.J.A.C. 19:61-3.1(j)(1). If the Commission finds that the violator's conduct constitutes a "willful and continuous disregard" of any applicable ethics provision, it may order that person's removal from office, and it may further order that person's debarment from holding any public office in the State, for a period of up to five years. N.J.S.A. 52:13D-21(i); N.J.A.C. 19:61-3.1(j)(2). Each of those penalties may be imposed in addition to any other applicable civil or criminal penalties. N.J.S.A. 52:13D-21(j). The Commission must file notice of any fine, suspension, or debarment it imposes with the OAL. N.J.A.C. 19:61-5.2(a)2.

### **(3) Composition and Budget.**

The Commission is currently comprised of nine members who are directly appointed by the Governor and serve without compensation. N.J.S.A. 52:13D-21(b)(1), (c). Seven members are Executive Branch officers or employees who serve at their appointing governor's pleasure, until their successors have been appointed and qualified. N.J.S.A. 52:13D-21(b)(1). The remaining two members of the Commission are appointed from the public at large, and only one of them may be of the same political party. Ibid. One of the public members serves a two-year term, while the other serves a four-year term. Ibid. The governor designates which two members of the Commission are to serve as Chair and Vice-Chair. Ibid.

Under current law, the Commission will be reduced to eight members in January 2006. N.J.S.A. 52:13D-21(b)(2). The governor is to appoint four members from the Executive Branch and four members from the public, and will continue to designate the Chair and Vice-Chair of the Commission. Ibid. The Executive Branch members will still serve at the governor's pleasure, but the public members will each serve four-year terms. Ibid. No more than two of the public members may be of the same political party. Ibid.

Governor Codey has proposed legislation that would transform the newly-named State Ethics Commission, from a nine-member body, with seven members from the Executive Branch and two member from the public, into a seven-member body, with three members from the Executive Branch and four public members, not more than two of whom of the same political party. The Chair would be selected from among the public members, whose four-year terms would be staggered, so that only one public member's term would expire in any given year. Under that pending legislation, the Commission would become a wholly independent body, "in but not of" the Department of Law and Public Safety.

Within the confines of its budget, the Commission may incur expenses and employ the professional, technical, and clerical staff necessary to perform its duties. N.J.S.A. 52:13D-21(e). The Commission's budget for the current fiscal year is \$661,000, which is primarily allocated to staff salaries.

The Commission's current staff is comprised of two management-

level employees and eight staff members. The Executive Director and Deputy Director are responsible for the day-to-day administrative and legal functions of the Commission. They oversee investigations and civil prosecutions, provide legal memoranda to the Commission, provide formal and informal advice in response to ethics-related inquiries, and provide training to the authorities' ELOs and select authority personnel. The staff members provide administrative, legal, investigative, and clerical support.

**B. Current Ethics Strictures.**

As noted, New Jersey's Executive Branch ethics laws are contained in a myriad of diverse, and sometimes disparate, sources. The Conflicts Law and rules promulgated by ECES, N.J.A.C. 19:61-1.1 to -7.5, set baseline standards applicable to all Executive Branch employees. In addition to the Conflicts Law, ECES regulations, and Executive Orders 10 and 189, an array of authority and agency-specific strictures may also apply.

**(1) Executive Orders 10 and 189.**

**(a) Executive Order 10.**

Executive Order 10 was issued by former Governor McGreevey on February 28, 2002. It rescinds Executive Order 2 (Whitman 1994), and is intended to combat financial conflicts of interest and the appearance of such conflicts. Toward that end, the order requires that certain Executive Branch members file annual financial disclosure statements with ECES, detailing their nuclear family's assets, liabilities, income, employment, and any other offices

held. (Exhibit E § I.1-3). Those individuals include: the Governor and specific members of his or her staff; the heads, assistant heads and deputy heads and commissioners of each principal department and division therein; all persons exercising similar authority in any independent authority and in any board or commission organized in, but not of, a principal department; all members of the State Boards of Agriculture, Education, Public Utilities, and Parole; the presidents of New Jersey public colleges and universities; all members of forty-one named boards, commissions, independent authorities, and public corporations; and the New Jersey members of twelve named interstate agencies. (Exhibit E § I.6).

The order requires that each designated individual file a financial disclosure statement within sixty days of assuming office, and by each May 15 thereafter. (Exhibit E § I.3.c). ECES must review each statement filed to determine whether the order and other applicable laws have been followed, and must maintain copies of approved statements on file for public inspection so long as the public officer or employee remains in office, and for five years thereafter. (Exhibit E § I.3.a, 4).

Executive Order 10 also prohibits the Governor, Cabinet members, and Cabinet-level appointees from receiving compensation from any outside source for the performance of official duties, and from receiving any earned or unearned income from any outside source, with a few, specified exceptions. (Exhibit E § I.7-9). To

implement those mandates, the order prescribes the terms and conditions of blind trusts and closely-held business interests that may be held by persons subject to the order. (Exhibit E §§ II-III).

To ensure that all authority-specific codes of ethics conform with the order and the Conflicts Law, each authority was required to review its code of ethics for compliance with those laws, and to submit its findings and proposed revisions to ECES within 120 days of the order. (Exhibit E § IV.1). As discussed below, the order also mandates that each authority appoint an individual to serve as its ELO, that ECES conduct quarterly meetings with those ELOs, and that ECES train all newly-appointed officers and employees covered by the order and offer annual training sessions to all covered individuals. (Exhibit E § IV.1-3).

**(b) Executive Order 189.**

Executive Order 189 was issued by former Governor Kean on July 20, 1988. It supplements Executive Order 34 (Byrne 1976), which provides the grounds and procedures for the debarment, suspension, and disqualification of State vendors who violate State or Federal laws, or the terms and conditions of their contracts with the State. (Exhibit F). Executive Order 189 is intended to combat State vendors'<sup>4</sup> conflicts of interest by prescribing baseline rules and regulations to be adopted by each Executive

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<sup>4</sup> "'Vendor' means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency." (Exhibit F § 1).

Branch department and agency concerning the causes, conditions, and procedures that govern the debarment, suspension, and disqualification of vendors for promoting violations of the Conflicts Law. (Exhibit F §§ 2-3). Toward that end, the order requires that the following prohibitions on vendor activities be promulgated by each department and agency, and be included in each request for proposal and each contract entered into by any State department or agency:

a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities

in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

f. The provisions cited above in paragraph 3a. through 3e. shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c.

[(Exhibit F § 3a-f).]

## **(2) Conflicts of Interest Law.**

The Conflicts Law was designed to ensure propriety and



preserve public confidence in our State government by prescribing: (1) specific standards to guide the conduct of public officials and employees; and (2) disciplinary mechanisms to ensure the uniform maintenance of those standards. N.J.S.A. 52:13D-12b. The Conflicts Law governs the conduct of State officers and employees,<sup>5</sup> special State officers and employees<sup>6</sup> (collectively, State employees), and elected members of the State Senate and General Assembly. N.J.S.A. 52:13D-13b, c, e. The law also governs the conduct of other persons with respect to casino-related activities. N.J.S.A. 52:13D-17.2. Willfully inducing or attempting to induce a public servant to violate the Conflicts Law or any ethics code promulgated thereunder is a disorderly-persons offense, exposing the violator to up to six months' imprisonment, a fine of up to \$500, or both. N.J.S.A. 52:13D-26.

In keeping with our mission, this discussion is limited to those provisions of the Conflicts Law which apply to the Executive Branch. It does not address specific applications to the Legislative Branch, N.J.S.A. 52:13D-18, -22, -22.3, or to casino-

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<sup>5</sup> "'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." N.J.S.A. 52:13D-13b.

<sup>6</sup> "'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." N.J.S.A. 52:13D-13e.

related activities, N.J.S.A. 52:13D-17.2.

**(a) Gifts, Honoraria, and Other Things of Value.**

The Conflicts Law contains three provisions governing State employees' solicitation or receipt of gifts, honoraria, and other things of value.

**(i) Section 14.**

Section 14 imposes a general ban on the acceptance of any thing of value that is offered to influence a State employee's performance of his or her public duties:

No State . . . employee . . . shall accept from any person,<sup>7</sup> 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.

[N.J.S.A. 52:13D-14.]

However, Section 14 does not apply to "the acceptance of contributions to the campaign of an announced candidate for elective public office." Ibid.

**(ii) Section 24.**

Section 14 is also inapplicable to the solicitation or receipt of compensation or reimbursement for the performance of certain official duties. Section 24 provides:

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<sup>7</sup> "'Person' means any natural person, association or corporation." N.J.S.A. 52:13D-13f.

a. No State . . . employee . . . 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.

b. A State . . . employee . . . may, in connection with any service, advice, assistance, appearance, speech or other matter related to the . . . employee['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 . . . employee['s] . . . official duties;

(2) 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;

(3) 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 (a) a nonprofit organization of which the . . . employee . . . 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 . . . ; or (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services.

. . . .

As used in this subsection, "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; and "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.

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.

d. (1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree 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 or 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<sup>8</sup> in a trust, financial compensation

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<sup>8</sup> "'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.)." N.J.S.A. 52:13D-13g. The provisions of the Conflicts Law governing the conduct of individuals are also "applicable to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their

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 travel as authorized in subsections (2) and (3) of paragraph b. of this section. To receive such income, a designated State officer shall first seek review and approval by the Executive Commission on Ethical Standards to ensure that the receipt of such income does not violate the . . . Conflicts . . . Law . . . or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: 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, 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 listed in this subsection.

e. A violation of this section shall not

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shareholder interest in such a corporation." Ibid.

constitute a crime or offense under the laws of this State.

[N.J.S.A. 52:13D-24.]

**(iii) Section 24.1**

Section 24 is supplemented by Section 24.1, which permits State employees to accept up to \$250 in things of value, annually, from lobbyists and governmental affairs agents:

Except as expressly authorized in [Section 24] . . . or when the lobbyist or legislative agent is a member of the immediate family<sup>9</sup> of the officer or staff member of the Executive Branch . . . , no officer or staff member of the Executive Branch . . . may accept, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value from each lobbyist or governmental affairs agent, as defined in the "Legislative Activities Disclosure Act of 1971," P.L. 1971, c. 183 (C. 52:13C-18 et seq.), totaling more than \$250.00 in a calendar year. The \$250.00 limit on acceptance of compensation, reward, gift, honorarium or other thing of value shall also apply to each member of the immediate family of a member of the Legislature, as defined in section 2 of P.L. 1971, c. 182 (C. 52:13D-13) to be a spouse, child, parent, or sibling of the member residing in the same household as the member of the Legislature.

b. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if received in the course of employment, by an employer other than the State, of an individual covered in subsection a. of this section or a member of the immediate family. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or

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<sup>9</sup> "'Member of the immediate family' of any person means the person's spouse, child, parent or sibling residing in the same household." N.J.S.A. 52:13D-13i.

other thing of value shall not apply if acceptance is from a member of the immediate family when the family member received such in the course of his or her employment.

c. Subsection a. of this section shall not apply if an officer or staff member of the Executive Branch . . . who accepted any compensation, reward, gift, honorarium or other thing of value provided by a lobbyist or governmental affairs agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or governmental affairs agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

d. A violation of this section shall not constitute a crime or offense under the laws of this State.

[N.J.S.A. 52:13D-24.1.]

Section 24.1, as applied to the Executive Branch, has been limited by N.J.A.C. 19:61-6.9 to -6.10, as discussed in Chapter III., Section 10.

**(b) Representations, Appearances, and Negotiations.**

The Conflicts Law contains seven provisions that govern current and former State employees' negotiations with and representations and appearances before State agencies.

**(i) Section 15 – Real and Personal Property Transactions.**

Section 15 regulates State employees' conduct with respect to the State's acquisition or sale of property:

No . . . State . . . employee shall represent,

appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, whether by himself or by or through any partnership, firm or corporation in which he has an interest or by any partner, officer or employee of any such partnership, firm or corporation any person or party other than the State in any negotiations for the acquisition or sale by the State or a State agency<sup>10</sup> of any interest in real or tangible or intangible personal property, or in any proceedings relative to such acquisition or sale before a condemnation commission or court; provided, however, nothing contained in this section shall be deemed to prohibit any person from representing himself in negotiations or proceedings concerning his own interest in real property.

[N.J.S.A. 52:13D-15.]

**(ii) Section 16 – Pending Proceedings.**

Section 16 regulates State employees' conduct with respect to proceedings pending before the State:

a. No special State officer or employee, nor any partnership, firm or corporation in which he 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<sup>11</sup> pending before

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<sup>10</sup> "'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, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, 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." N.J.S.A. 52:13D-13a.

<sup>11</sup> "'Cause, proceeding, application or other matter' means a specific cause, proceeding or matter and does not mean or include determinations of general applicability or the preparation or review of legislation which is no longer pending before the Legislature or the Governor." N.J.S.A. 52:13D-13h.



the particular office, bureau, board, council, commission, authority, agency, fund or system in which such special State officer or employee holds office or employment.

b. No State . . . employee . . . , nor any partnership, firm or corporation in which he 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. . . .

c. Nothing contained in this section shall be deemed to prohibit any . . . State . . . 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:

- (1) Pending before any court of record of this State,
- (2) In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation),
- (3) In connection with the determination or review of transfer inheritance or estate taxes,
- (4) In connection with the filing of corporate or other documents in the office of the Secretary of State,
- (5) Before the Division on Civil Rights or any successor thereof,
- (6) Before the New Jersey State Board of Mediation or any successor thereof,
- (7) Before the New Jersey Public Employment

Relations Commission or any successor thereof,

(8) 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, § 5 (C. 39:6-65), or

(9) 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.

[N.J.S.A. 52:13D-16.]

**(iii) Section 17 - Post-Employment Conflicts.**

Section 17 regulates former State employees' representation in matters in which they were substantially and directly involved during their State service:

No State . . . 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 . . . 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 \$500.00 or imprisonment not to exceed six months, or both.

[N.J.S.A. 52:13D-17.]

**(iv) Section 19 – Goods and Services Contracts.**

Section 19 regulates State employees' ability to enter into goods and services contracts with the State:

a. No . . . State officer or employee shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, 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, except as provided in subsection b. of this section. No 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 where he is employed or an officer shall knowingly himself, by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, 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, except as provided in subsection b. of this section. The restriction contained in this subsection 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 partners or a corporation in which he owns or controls more than 1% of the stock.

b. The provisions of subsection a. of this section shall not apply, to (a) purchases, contracts, agreements or sales which (1) are

made or let after public notice and competitive bidding or which (2), pursuant to section 5 of chapter 48 of the laws of 1944 (C. 52:34-10) or such other similar provisions contained in the 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 section 10 of article 6 of chapter 112 of the laws of 1944 (C. 52:27B-62), if such purchases, contracts or agreements, including change orders and amendments thereto, shall receive prior approval of . . . the Executive Commission on Ethical Standards if a State officer or employee or special State officer or employee in the Executive Branch has an interest therein.

[N.J.S.A. 52:13D-19.]

**(v) Section 19.1 – Intellectual Property Contracts.**

Section 19.1 regulates State employees' ability to enter into intellectual-property contracts with the State:

Notwithstanding the provisions of . . . [the Conflicts Law], a State . . . employee or his partners or any corporation or firm in which he 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 which minimizes actual conflicts of interest and the code of ethics was approved in accordance with section 12 of P.L. 1971, c. 182 (C. 52:13D-23) and the contract or agreement complies with that code procedure.

[N.J.S.A. 52:13D-19.1.]

**(vi) Section 19.2 – Rental Agreements.**

Section 19.2 regulates State employees' ability to enter into rental agreements with State agencies operating facilities to assist small businesses:

Notwithstanding the provisions of P.L. 1971, c. 182 (C. 52:13D-12 et seq.), a State . . . employee or his partners or any corporation or firm in which he 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.

[N.J.S.A. 52:13D-19.2.]

**(vii) Section 20 – Outside Pecuniary Interests.**

Section 20 regulates a State employee's ability to represent State agencies in transactions involving the employee's pecuniary interest:

No . . . State . . . employee shall act as officer or agent for a State agency for the transaction of any business with himself or with a corporation, company, association or firm in the pecuniary profits of which he has an interest (except that ownership or control of 10% or less of the stock of a corporation shall not be deemed an interest within the meaning of this section).

[N.J.S.A. 52:13D-20.]

**(c) Confidentiality.**

Section 25 prohibits State employees' disclosure and use of

information not generally available to the public:

No State . . . 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 receives or acquires in the course of and by reason of his official duties. No State . . . 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 receives or acquires in the course of and by reason of his official duties.

[N.J.S.A. 52:13D-25.]

**(3) Authority Codes.**

Section 23 of the Conflicts Law requires that each authority promulgate its own code of ethics, and sets forth the minimum standards for such codes:

(a) The head<sup>12</sup> of each State agency, or the principal officer in charge of a division, board, bureau, commission or other instrumentality within a department of State Government designated by the head of such department for the purposes hereinafter set forth, shall within six months from the date of enactment, promulgate a code of ethics to govern and guide the conduct of . . . the State . . . employees in the agency to which said code is applicable. Such code shall conform to the general standards hereinafter set forth in this section, but it shall be formulated with respect to the particular needs and problems of the agency to which said code is to apply. Notwithstanding any other provisions of this section, the New Jersey members to any interstate agency to which New Jersey is a party and the officers and

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<sup>12</sup> "'Head of a State agency' means (1) 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." N.J.S.A. 52:13D-13d.

employees of any State agency which fails to promulgate a code of ethics shall be deemed to be subject to a code of ethics the provisions of which shall be paragraphs (1) through (6) of subsection (e) of this section.

(b) A code of ethics formulated pursuant to this section to govern and guide the conduct of the State . . . employees in any State agency in the Executive Branch, or any portion of such a code, shall not be effective unless it has first been approved by the Executive Commission on Ethical Standards. When a proposed code is submitted to the said commission it shall be accompanied by an opinion of the Attorney General as to its compliance with the provisions of this act and any other applicable provision of law. Nothing contained herein shall prevent officers of State agencies in the Executive Branch from consulting with the Attorney General or with the Executive Commission on Ethical Standards at any time in connection with the preparation or revision of such codes of ethics.

. . . .

(d) Violations of a code of ethics promulgated pursuant to this section shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. When a person who is in the classified civil service is charged with a violation of such a code of ethics, the procedure leading to such removal or discipline shall be governed by any applicable provisions of the Civil Service Law and the Rules of the Department of Civil Service. No action for removal or discipline shall be taken under this subsection except upon the referral or with the approval of the Executive Commission on Ethical Standards . . . .

(e) A code of ethics for officers and employees of a State agency shall conform to the following general standards:

(1) No State . . . 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.

(2) No State . . . 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 Executive Commission on Ethical Standards, if he is an officer or employee in the Executive Branch . . . .

(3) No State . . . employee should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

(4) No State . . . employee should act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

(5) No State . . . 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.

(6) No State . . . employee should accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties.

(7) No State . . . 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 . . . employee.



(8) Rules of conduct adopted pursuant to these principles should recognize that under our democratic form of government public officials and employees should be drawn from all of our society, that citizens who serve in government cannot and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are government officials and employees have a right to private interests of a personal, financial and economic nature; that standards of conduct should separate those conflicts of interest which are unavoidable in a free society from those conflicts of interest which are substantial and material, or which bring government into disrepute.

. . . .

[N.J.S.A. 52:13D-23.]

According to a recent ECES survey, (Exhibit G), forty-three authorities have adopted and follow their own codes of ethics. Four authorities have adopted codes of ethics, but have elected to follow their department's code instead. Eight authorities have never adopted a code of ethics, and follow their department's code. Eight authorities have promulgated codes of ethics that are pending review by the Attorney General's Office, and one authority has adopted a conflicts policy that has not been reviewed by the Attorney General's Office or approved by the Commission. Of the twelve State colleges and universities, eight have adopted entity-specific codes of ethics.

**C. Current Ethics Training Programs.**

**(1) Training Conducted by ELOs.**

In the 1970s, ECES established an informal network of ELOs throughout the Executive Branch to coordinate with and assist ECES in implementing and enforcing the Conflicts Law and related ethics codes. Since 2002, Executive Order 10 has required that each Executive Branch authority appoint an individual from within its organization to serve as an ELO. (Exhibit E § IV.3). However, no enforcement mechanism is attached to that requirement.

To date, sixty-six ELOs are known to the Commission. Approximately 57% of those individuals are attorneys. In addition to ethics-related duties, each ELO performs his or her primary job responsibilities, such as counsel, agency head, or personnel officer. Some ELOs report directly to their agency heads, while others are several layers removed from upper management. No ELO receives additional compensation for his or her ELO duties.

ELOs are expected to perform a variety of ethics-related tasks, including:

- distributing their authority's code of ethics and obtaining a signed receipt from each recipient;
- imposing and implementing disciplinary actions, with ECES' approval, for violations of their authority's code;
- promulgating and/or revising their authority's code of ethics with ECES' and the Attorney General's approval;
- making or processing authority determinations concerning applications of their code and the Conflicts Law and forwarding those determinations to ECES;
- reviewing and forwarding to ECES employees' outside-employment and business-interest disclosures;
- reviewing outside-activity invitations and the benefits

offered at such events;

- reviewing gifts offered to or accepted by employees;
- reviewing joint ventures proposed to or by employees and forwarding joint-venture determinations to ECES;
- acting as liaisons to ECES to provide information that it needs to provide advice and to conduct investigations; and
- disseminating communications from ECES to the Executive Branch at large, including ECES newsletters, guidelines, and memoranda.

Significantly, ELOs are not required to conduct regular training sessions. According to our audit results, only one-half of all authorities offer any form of training to all or a segment of their authority's personnel. Of those authorities, only one-third offer such training on an annual or more frequent basis, one-half require employee attendance or participation, and less than one-half rely upon ELOs to conduct such training. Some ELOs use their own training materials, some use a Power-Point presentation devised by ECES, and some invite ECES staff to their employee-training sessions.

## **(2) Training Conducted by ECES.**

### **(a) ELO Training.**

Pursuant to Executive Order 10, ECES must conduct quarterly meetings with ELOs to keep them abreast of changes in the Conflicts Law, regulations, and guidelines. (Exhibit E § IV.3). ECES also distributes a quarterly newsletter, which contains a summary of recent ECES cases, and statutory, regulatory, and guideline

updates. The newsletter is distributed to each authority either by paper copy or electronically, and is also available on the ECES website. ECES requests that each authority distribute the newsletter to its officers and employees, either electronically, or by posting the newsletter in an accessible area.

**(b) Employee Training.**

ECES has conducted numerous employee-training sessions in the past, upon the request of various agencies. However, the only Executive Branch ethics training required by law is that prescribed by Executive Order 10, which mandates that approximately 2000 newly-appointed officers and employees covered by the order attend training sessions concerning the order's financial-disclosure requirements, the Conflicts Law, and any applicable codes of ethics. (Exhibit E § IV.2). The order also mandates that ECES offer such training to covered officers and employees on an annual basis, but attendance is not required. Ibid. ECES conducted fifteen such sessions in 2003, and fifteen sessions in 2004. No other ethics training is mandated for the State's Executive Branch workforce.

**(c) On-Line Training.**

In 2003, ECES developed a group of six on-line training modules, to facilitate the training mandated by Executive Order 10, and to extend the availability of ethics training to all Executive Branch employees. See <http://www.state.nj.us/lps/ethics/modules.htm>. The training modules address the requirements of Executive

Order 10, as well as ethics rules concerning gifts, recusals, outside activities, outside events, and post-employment conduct. The modules are interactive and allow participants to proceed at their own pace and test their understanding at the end of each module. Once a test is completed, the participant must complete a receipt and forward it to ECES. As of December 13, 2004, ECES had received 771 such receipts.

**CHAPTER II:  
ETHICS COMPLIANCE AUDIT**

In considerable measure, stringent ethics rules are now in force. Ethical lapses, when they occur, can be attributed either to: (1) ignorance, for which we recommend more effective mandatory training programs and increased public accessibility to ethics laws and guidelines; or (2) bad faith, for which we recommend aggressive enforcement and penalty-based mechanisms.

To learn more about the present state of affairs and to identify potential areas for improvement in the Executive Branch's current ethics laws, regulations, codes, training programs, compliance monitoring, and enforcement, we conducted a comprehensive Ethics Compliance Audit. To facilitate the audit, we developed and sent a standardized questionnaire<sup>13</sup> to sixty New Jersey Executive Branch departments, agencies, boards, and commissions. (Exhibit H). The questionnaire consisted of twenty-seven inquiries, with multiple sub-parts, designed to elicit information that would permit us to assess Executive Branch officers' and employees' awareness of the State's ethics rules.

We received a ninety percent response rate to our Ethics Compliance Audit. Sufficiently detailed information was provided to support the following findings.

**1. Awareness of Outside-Activity Restrictions Prior to and After Accepting Public Employment.**

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<sup>13</sup> The questionnaire distributed was derived from a questionnaire created by the Connecticut Special Counsel for Ethics Compliance.

All State Executive Branch officers and employees are subject to the Conflicts Law, as are all personnel of the State's numerous authorities. In addition, most of those officers and employees are subject to specific ethics codes promulgated by their respective authorities. The Conflicts Law and many of the authorities' codes impose political-activity, financial-interest, and outside and post-employment restrictions that, if known in advance, might dissuade some individuals from accepting public employment, while assisting others in preventing inadvertent non-compliance upon commencing public employment.

Significantly, only fifteen percent of respondents indicated that all prospective employees are apprised of the State's ethics restrictions during the interview process or at any time before accepting public employment.<sup>14</sup> Eleven percent of respondents indicated that applicants are apprised of such restrictions only if certain positions are applied for, or if a conflict of interest is suspected during the interview process. Another six percent indicated that they rely solely upon the pre-employment notice provided through the State's standard Application for Employment, which advises applicants that prior approval is necessary before accepting outside employment while working for the State. (Exhibit I at 4). Sixty-one percent of respondents indicated that prospective employees receive no notice of the ethics restrictions

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<sup>14</sup> The Casino Control Commission has an excellent, comprehensive "Employment Applicant Checklist," which all job applicants receive prior to their applications, and again upon offers of employment from the commission. (Exhibit

associated with their employment prior to accepting employment. The remaining three of forty-seven respondents failed to answer the question.

Generally, State employees are sufficiently apprised of the ethics restrictions placed upon them only after they have accepted and commenced employment. Only eight percent indicated that the subject authority's employees are not apprised of the State's ethics rules upon commencement of employment. Ninety-three percent indicated that they have authority-specific ethics codes, apart from State law. Ninety-one percent indicated that those codes are physically distributed to all new employees. Forty-nine percent indicated that the codes are distributed during new-employee orientation sessions, and thirteen percent indicated that the codes are also distributed annually thereafter. Eighty-five percent indicated that employees are required to acknowledge, in writing, their receipt of those materials.

**A. Awareness of Political Activity Restrictions.**

Seventy-seven percent of respondents indicated that employees are apprised of political-activity restrictions during their employment, through their codes of ethics and/or periodic or posted reminders. Four percent indicated that they only advise select officers or employees of their political-activity restrictions, and fifteen percent indicated that they do not advise personnel of such restrictions. Four percent failed to answer the question.

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J). That checklist could be readily adapted by all New Jersey agencies,



**B. Awareness of Post-Employment Restrictions.**

Seventy-five percent of respondents indicated that employees are apprised of post-employment restrictions during their State employment, either through the authorities' respective codes of ethics, exit interviews, or both. Six percent indicated that employees are advised of those restrictions only on an "as needed" basis. The remaining nineteen percent of respondents indicated that employees are not apprised of those restrictions.

**2. Availability of Ethics Training and Guidance.**

**A. Ethics Officers and Counselors.**

Ninety-one percent of responding authorities indicated that they have at least one designated ethics counselor, ethics officer, or ethics liaison officer (ELO). Four percent reported that they relied upon a related authority's ELO for ethics guidance. The ELOs' described responsibilities ranged from merely answering ethics inquiries, to a myriad of tasks, including interfacing with ECES, conducting training sessions and promulgating written reminders, handling all inquiries and initial investigations, updating and distributing their respective codes of ethics, distributing and reviewing all required conflict-of-interest and outside-activity, -employment, and financial disclosure forms, reviewing all reports of gifts offered or received, providing post-employment conflicts advice, and maintaining their authority's intranet ethics site, if any. The estimated time ELOs spent on

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departments, and authorities.

ethics-related duties ranged from a low of zero point five percent to a high of seventy percent per year. The reported number of ethics inquiries received by each ELO ranged from an average of four, to an average of 1,800, per year.

The majority of ELOs, eighty-one percent, reported that they stay current with changes in the State's ethics laws by attending quarterly ELO/ECES meetings and by reading ECES communications distributed to ELOs. Twenty-eight percent also reported monitoring legislation and/or related press releases and articles to stay abreast of new developments. Fourteen percent reported relying solely upon other ELOs, and/or monitoring legislation, press releases, and ECES' communications and website to stay informed. One reported relying solely upon ECES' quarterly ELO meetings, and one reported that she was aware of, but "not invited" to, the quarterly meetings.

#### **B. Ethics Training Programs.**

Forty-five percent of responding authorities reported that they offered no formal ethics training to their officers or employees, but four of those authorities reported that training programs were under development and would be implemented in the near future. Of the remaining fifty-five percent of responding authorities that do offer formal ethics training, only twenty-five percent appear to offer training to all officers and employees, while thirty percent offer training only to select personnel. Thirty percent of authorities offering ethics training rely

exclusively upon ECES or the ECES website, forty-two percent rely solely upon their ELOs or internal training staff, and fifteen percent rely upon a combination of ECES and ELO programs. Of the remaining thirteen percent, one authority relies upon the Department of Personnel's Human Resources Development Institute for its training, one relies upon the Attorney General's Office and ECES, and two did not specify who conducted their training. Only thirty-five authorities reported that training is conducted on an annual or more frequent basis, and only fifty-three percent reported that attendance or participation in their training programs is mandatory for all subject personnel.

**C. Ethics Guidance and Reporting Procedures.**

Eighty-three percent of responding authorities indicated that employees are actively encouraged to identify and report potential ethics problems, and seventy-seven percent indicated that they have formal procedures to address ethics-related inquiries from personnel. Fifty-one percent reported that all ethics inquiries are to be directed initially to their respective authority's ELO. Nineteen percent reported that ethics inquiries are to be directed to other authority personnel first, such as an executive director, a supervisor, or a human resources manager. Twenty-five percent reported that ethics inquiries may be directed to such personnel, to the ELO, or to ECES, at the inquirer's option.

Sixty-six percent indicated that they permit anonymous ethics-related complaints. Eleven percent indicated that they would

protect complainants' identities either automatically or upon request, and seventeen percent indicated that no anonymous or confidential complaints are permitted. Six percent failed to answer the question.

Sixty-one percent reported that they protect "whistleblowers" against retaliatory measures. Of those authorities, seventy-six percent rely only upon CEPA for such protection, and seven percent rely upon their own policies, in addition to CEPA. Seventeen percent did not discuss CEPA, and instead reported reliance on other protective policies or measures, such as warning potential retaliators, or transferring whistleblowers to other departments. Three authorities indicated that they do not protect whistleblowers or are unaware of any such protection.

### **3. Compliance Monitoring Procedures.**

Seventy-seven percent of responding authorities reported that they have ethics monitoring, auditing, or investigative procedures in place. The procedures reported vary widely, ranging from such measures as ELOs' reviews of outside-activity and -employment disclosure forms, to "multi-layered" procurement processes, internal and/or external financial audits, and targeted investigations of suspected wrongdoing. Of those authorities with compliance monitoring procedures, twenty-four percent of authorities reported that internal auditors had identified ethics-compliance issues in the past. Reported follow-up measures include investigations, counseling, re-training, discipline, termination,

referrals to ECES and/or the Criminal Justice Division, and revisions to monitoring or auditing procedures.

Sixty-four percent of the total responding authorities indicated that their awareness of potential compliance issues came from supervisors' or employees' inquiries or complaints. Fifteen percent reported that they were also informed by complaints from the public, and fifteen percent reported that they became aware of potential compliance issues through ELO reviews of outside-activity requests and mandatory conflict-of-interest disclosure forms. Nine percent also credited internal or external audits or investigations for bringing potential issues to their attention. The remaining authorities failed to answer the question.

**A. Monitoring Interested Parties.**

Seventy-two percent of responding authorities reported that they keep a record of persons who request official action from their authority. Nineteen percent do not keep such records, and nine percent failed to answer the question.

Twenty-three percent indicated that they have a system through which employees are apprised of the identities of persons doing business or seeking to do business with the State. Fifty-three have no such system, and twenty-four percent failed to answer the question.

Fifteen percent indicated that their employees know how to check if a person is a registered lobbyist. Fifty-five percent indicated that their employees would not know how to do so, and

thirty percent failed to answer the question.

**B. Monitoring Outside Employment.**

Seventy-five percent of responding authorities indicated that employees are required to obtain approval before accepting outside employment. Four percent reported that employees need only report such outside employment if there appears to be a conflict of interest with their official duties. Nine percent merely indicated that employees must file annual outside-employment disclosures, and twelve percent indicated that no notice of outside employment is required.

**C. Monitoring Post-Employment.**

Only nine percent of respondents indicated that they routinely follow up to ensure former employees' compliance with post-employment restrictions. One authority's licensing division maintains a "restricted employment" list of former employees, which is accessible to all potential employers. Another authority reported that it relies on the Department of Personnel's Shared Services Center to detect infractions. Sixty percent indicated that they do not routinely follow up to ensure former employees' compliance with post-employment restrictions, but thirty-two percent of those authorities indicated that they would investigate suspected post-employment violations or refer those matters to ECES. Twenty-nine percent of respondents failed to answer the question.

**4. Procurement Policies and Procedures.**

Signatory authority for official contracts was reported in three distinct categories: (1) commissioners, executive directors, chief officers, and/or their designated assistants, deputies, or managers; (2) designated authority officers or the Department of Treasury Purchases and Property Division, depending upon the amount of the contract; and (3) a variety of individuals, depending upon the subject matter and/or the amount of the contract.

Twenty-one percent reported that they have procedures for personnel that award contracts to determine whether a contract was bid on or awarded to a State employee or his or her immediate family member. Fifty-five percent have no such procedures, and twenty-four percent failed to answer the question.

Reported measures employed to preclude a signatory's conflict of interest vary widely, and include reliance on: (1) the signatory's ethics training, self-reporting, and recusal; (2) the signatory's annual conflict-of-interest disclosures; (3) multi-layered or outside-approval processes for "large" contracts; (4) reliance upon competitive bidding and vendors' disclosure certifications; and (5) reliance upon the authority's ELO to review each contract for conflicts.

Forty percent reported having previously reviewed their procurement/contracting policies and procedures for potential ethics and integrity flaws or loopholes. Of that forty percent, thirty-one percent reported that their policies were revised after weaknesses were discovered. Forty percent reported never having

reviewed their procurement/contracting methods, and twenty percent failed to respond to the question.

#### **5. Gift Policies and Procedures.**

Seventy-seven percent of respondents indicated that they have independent gift-acceptance policies, apart from State laws. Twenty-three percent reported no separate policies. Thirty-four percent indicated that they accept "gifts to the State," ranging from construction funds and historical items, to honoraria and perishables. Reported methods for approving gifts received range from obtaining supervisory or ELO approval, to seeking Governor's Counsel approval. The most common reported method for "recording" gifts received is placing them on public display. Fifty-five percent indicated that they do not accept gifts, and eleven percent did not respond to the question.

Sixty-four percent indicated that employees must report any offers and/or receipts of gifts to their superiors or the agency ethics officer. One authority indicated that only "inappropriate" gifts must be reported. Ten percent indicated that no reports are required. Twenty-five respondents failed to answer the question.

Eighty-three percent indicated that they have or would follow-up with any employee found have violated their gift policies, primarily through counseling and/or discipline, with ECES' concurrence. Three authorities indicated they have no follow-up procedure, and five authorities failed to answer the question.

Fifty-one percent indicated that illegal gifts would be



donated or returned to their donors with a verbal or written explanation of the respective authority's gift policy. However, only twenty-three percent indicated that they routinely apprise outside entities of their gift policies before violations occur, through the authorities' codes of ethics, dedicated request-for-proposal clauses, periodic written notices to their vendors, or, in the case of two authorities, the authority's Vendor Code of Ethics.

#### **6. Suggestions.**

In addition to the above information, our survey also solicited the authorities' suggestions for improvements to the State's current ethics system, in four basic areas: (1) the laws; (2) training procedures; (3) compliance procedures; and (4) enforcement procedures. Fourteen respondents had no suggestions, and two of those volunteered that the present system was "working well," or was "well served" by ECES. The remaining thirty-three respondents made suggestions in one or more areas for improvement.

##### **A. Suggestions to Improve Current Laws.**

The responding authorities' suggested improvements to the State's current ethics laws include adopting new, plain-language rules, adopting uniform rules applicable to all State, county, and municipal employees, permitting the federal and other state governments to reimburse employees for official out-of-state travel, strengthening post-employment restrictions and penalties, prohibiting lunch gifts or mandating that all such gifts and offers be reported, permitting gifts of \$20 or less per occasion, up to

\$50 per year, and increasing ECES' budget. In addition, one authority suggested that the financial disclosure requirements mandated by Executive Order 10 be made applicable to all present and future boards and commissions, rather than only to the exhaustive list described therein.

**B. Suggestions to Improve Current Training Procedures.**

Suggestions for improving training procedures fell into two broad categories: training personnel and "training the trainers." General training suggestions included increased training and educational outreach "on every level," offering and/or mandating ECES on-line training to some or all personnel, mandating that all new officers and employees attend ethics-orientation training, and mandating regular refresher courses thereafter, ranging from every one to every three years. A few authorities also recommended that all State board members, including appointed members of the public, receive mandatory training and/or ethics guidelines.

The frustration of some ELOs was apparent in the responses received. Four ELOs suggested that an "external" trainer, such as ECES or the Human Resources Development Institute, conduct personnel training to reduce ELO work loads and differing interpretations of State ethics laws. Six suggested more formal, frequent, and "live" external training for ELOs, and two suggested that actual ECES cases be disseminated to ELOs for training purposes. Two suggested that a manual of standard procedures and protocols be developed for all ELOs. One suggested that a uniform

official training program be designed for all of the authorities, and another suggested that all ELO posts be made full-time, State-classified positions.

**C. Suggestions to Improve Current Compliance Procedures.**

As for improving compliance procedures, many authorities simply cross-referenced their law-revision or training suggestions. Two respondents also suggested that ECES decisions be distributed to all personnel to discourage similar violations. One authority suggested that post-employment rules be distributed in exit interviews. One suggested that procurement policies and vendor ethics be more closely scrutinized, and another suggested that vendors' relationships with State officials be made more transparent. One authority suggested that a website listing of all State vendors be developed and maintained, and three suggested that the public and all State vendors be educated about the State's ethics laws — particularly its gift laws — perhaps through public service announcements on radio or television, or by printing the relevant ethics rules on all State requests for proposals.

**D. Suggestions to Improve Current Enforcement Procedures.**

Finally, as for improving enforcement procedures, two respondents suggested that ECES must be more adequately staffed and funded to respond to complaints and ELO requests for guidance. One respondent suggested that violators should be more often or more heavily penalized. One suggested that authorities' auditing and

ethics personnel be formally coordinated so that ethics lapses could be more readily detected and punished, and one suggested that all authorities be required to operate with centralized accounting and personnel systems, to detect more ethics lapses.

**CHAPTER III:  
STRENGTHS, WEAKNESSES, AND RECOMMENDATIONS FOR CHANGE**

New Jersey has had its share of scandals. Still, our Ethics Audit reveals that, overall, New Jersey's Executive Branch officers and employees strive to do right for the State and its citizens. The State must reinforce that resolve by ensuring that every level of government is beyond reproach.

Recent ethics investigations of several high-profile Executive Branch officials have exposed deficiencies in our current system and some of its actors. Our review is not intended to add fuel to that fire, but instead to reflect the earnest belief that, with the reforms proposed, New Jersey can do better. However dismal those ethical lapses may be, our review of the national experience in the realm of government ethics reveals that, contrary to popular perception, New Jersey is not the "corruption capital" of the United States.<sup>15</sup> In fact, New Jersey is not even in the top ten.<sup>16</sup>

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<sup>15</sup> In the Corporate Crime Reporter's analysis of United States Department of Justice statistics tracking federal convictions of public officials from 1993 to 2002, New Jersey ranked sixteenth among states for the title of "most corrupt" state in the nation. Public Corruption in the United States, Corp. Crime Rep., Jan. 16, 2004, at 6, 13 (Public Corruption) available at <http://www.corporatecrimereporter.com/corruptreport.pdf>. With a public corruption index rating of 3.57, New Jersey's corruption rate was less than half of the "most corrupt" state's rate. Ibid. Since the issuance of that report in early 2003, the Public Integrity Section of the Department of Justice, pursuant to an agency-wide nondisclosure policy adopted by the Ashcroft administration, has not been permitted to give interviews and has not made available more current data. In the Better Government Association's (BGA) 2002 Integrity Index, which ranked all fifty states based on the relative strength of their laws to prevent corruption and promote integrity in state government, New Jersey ranked thirty-ninth. Better Gov't Assoc. & Ford Motor Co. Ctr. for Global Citizenship, The BGA Integrity Index, at 8-9, 13, available at [http://www.bettergov.org/pdfs/IntegrityIndex\\_10.22.02.pdf](http://www.bettergov.org/pdfs/IntegrityIndex_10.22.02.pdf). However, strong laws do not guarantee integrity. Public Corruption, supra, at 9. Apparently, "what matters more than strong laws is a strong political economy — reporters, citizen groups, prosecutors, judges, religious leaders — who are willing to speak out about the rampant corruption in our midst." Id. at 10. With Governor Codey leading the charge, New Jersey's

Thus, we are not alone in our embarrassment. The moniker of "corruption capital" has been applied to a number of other states and local governments in recent years, including Connecticut,<sup>17</sup> Florida,<sup>18</sup> Georgia,<sup>19</sup> Louisiana,<sup>20</sup> New York,<sup>21</sup> Ohio,<sup>22</sup> Washington,

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"political economy" has never been stronger, nor more conducive to the recommendations we now propose.

<sup>16</sup> Public Corruption, supra, note 15.

<sup>17</sup> See, e.g., Tandaleya Wilder, Connecticut's New Governor, Jodi Rell, Will Be Sworn in Today [DP] (National Public Radio broadcast July 1, 2004) (referring to Connecticut as a "state mired in scandal and nicknamed the Corruption Capital of the North"); Charles Walsh, State Government Learning How to Just Say 'No', Conn. Post, June 23, 2004 ("The gifts that brought Rowland low also further secure Connecticut's standing as the corruption capital of America.").

<sup>18</sup> See, e.g., Daniel Ruth, In The End, A Fine Emily Litella Impersonation, Tampa Tribune, Dec. 10, 2003, at 2 (remarking that rumors of corruption in the Hillsborough County judiciary were not surprising considering that "Florida's open meeting/public record laws were drafted in direct response to Hillsborough County's historic role as a public corruption capital"); Ted B. Kissell, Gelber Unbound, Miami New Times, July 9, 1998 (referring to "South Florida's re-emergence as the nation's corruption capital"); Mike Clary, Corruption Count Rising in Florida, L.A. Times, June 18, 1998, at A5 (quoting a letter advocating the formation of a government watchdog group as stating that South Florida had gone from "the crime capital of America" to "its corruption capital").

<sup>19</sup> See, e.g., Sue Anne Pressley, Georgia Sheriff's Office is in the Line of Fire: Two Shootings Follow Allegations of Corruption, Wash. Post, Mar. 24, 2001, at A3 (describing citizens' embarrassment over "DeKalb's growing national reputation as a corruption capital" after the gunning down of Sheriff-elect Derwin Brown in 2000).

<sup>20</sup> See, e.g., Adam Nossiter, Tough Judge Shocks New Orleans With His Own Indictment: Ex-Prosecutor Faces Federal Drug Charge, Wash. Post, Aug. 6, 2002, at A3 ("It is a fresh season for scandal in America's regional corruption capital (there were more public corruption indictments and convictions in Louisiana in 2000 than in any other state, according to the FBI). . . ."); John L. Smith, Jack Binion's Illinois Troubles Business as Usual in Las Vegas, Las Vegas Rev. J., Jan. 6, 2000, at 1B (referring to Louisiana as the "political corruption capital of North America").

<sup>21</sup> See, e.g., Steven Greenhouse, Scandals Affirm New York As Union Corruption Capital, N.Y. Times (Feb. 15, 1999).

<sup>22</sup> See, e.g., Steve Stephens, New Rome's Days Might Be Numbered, Columbus Dispatch, Dec. 2, 2003, at 3C ("[A]s state auditor, [Jim Petro] called the [New Rome, Ohio, a village of 60 people that collected almost \$400,000 in traffic fines per year] the per-capita corruption capital of Ohio and suggested the village government be dissolved.").

D.C.,<sup>23</sup> and Wisconsin.<sup>24</sup> However, that New Jersey finds ample company in its reputation for corruption is of little comfort, and does nothing to further our cause. Our following prescriptions for ethics reform are intended to close the gap between what is, and what ought to be, in the conduct of New Jersey's affairs.

**1. CREATE AN ENTIRELY NEW, INDEPENDENT AND PROACTIVE ENFORCEMENT AGENCY, CALLED THE "STATE ETHICS COMMISSION" (COMMISSION).**

**A. Make The Commission An Independent Watchdog.**

The new State Ethics Commission is to replace the Executive Commission on Ethical Standards. To ensure maximum independence, the Commission should be bipartisan and, ultimately, be composed entirely of seven public members. Its members should serve staggered four-year terms. Its Chair and Vice-Chair should be elected by its members to two-year terms.

Governor Codey has proposed legislation that would transform this newly-named State Ethics Commission from a nine-member body, with seven members from the Executive Branch and two public members, into a seven-member body, with three members from the Executive Branch and four public members. Not more than two of the

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<sup>23</sup> See, e.g., Brickbats Over Religious Inscription, Chicago Tribune, July 27, 2003 ("[S]omething should be said here about the stench coming from the corruption of the capital itself, with its parasitic, fundraising solons; their pestilent, rapsallion troop followers; the piggish lobbyists with their stinking and infectious slush funds.").

<sup>24</sup> See, e.g., Capitol Scandal Brings Shame on State, Green Bay Press-Gazette, Oct. 19, 2002, at 7A (discussing the criminal investigations of four legislative officials and noting that "[a] state once known for its squeaky-clean government now is the corruption capital of the country").

public members would be of the same political party, and the Chair would be selected from among its public members. Given the strength of the Governor's commitment to ethics reform, that movement toward change could pave the way for the implementation, over time, of an entirely independent body composed of seven public members, while assuring a smooth transition toward that end.

Our recommendations are consistent with a national trend toward stronger, independent ethics commissions. Of thirty-nine states with state-wide ethics monitoring entities<sup>25</sup> (commissions), almost all are bipartisan, and twenty-eight are composed entirely of public members. Of those twenty-eight, twenty-two allow commission members to elect the Chair and Vice-Chair.

While some states, like Iowa, have commissions composed of an even number of government and public members and require a political balance, most have an odd number of members, but limit the number of members of the same political party to a bare majority. For example, the Delaware Public Integrity Commission's board is comprised of seven public members, appointed by the Governor and confirmed by the Senate, with no more than four members belonging to the same political party. The Oregon Government Standards and Practices Commission also has a seven-member board, with three gubernatorial appointments, four

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<sup>25</sup> State executive ethics entities range from a single attorney within state Attorney General's Office to a commission, board, or agency charged with of monitoring ethics laws. Of the states that do not have a specific entity in charge of ethics, some have city specific ethics entities, while others have codes of ethics administered internally by individual agencies.



appointments upon the recommendation of Democratic and Republican leaders of the House and Senate, and a requirement that no more than four members be of the same political party. In addition, many states, whether their boards are independent or composed of both public and government members, provide for staggered terms of their members, ranging from three years in Maine and Pennsylvania, to six years in Iowa, Montana, and Ohio.

Twenty-eight states with independent commissions prohibit members from holding other public office, office in a political party or campaign committee, or employment by lobbyist groups. In addition to requiring independence during tenure, some states further require complete independence for a period of time before or after a member's term. For example, the Georgia State Ethics Commission eligibility requirements prohibit the appointment of anyone who has held a federal, state, or local public office within the five-year period prior to appointment. Other states with such pre-appointment requirements include Connecticut, Maine, and Pennsylvania, with periods ranging from one to five years. Missouri and Arizona, on the other hand, impose post-employment bans, prohibiting their former commissioners' assumption of other public offices for one and three years, respectively.

To further ensure the integrity of an independent commission, most state commission members are not salaried, although many states allow reimbursement for necessary expenses, plus modest per

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meeting stipends, ranging from \$75 in Ohio, to \$250 in Pennsylvania. Other states providing per meeting stipends include Delaware, Iowa, Mississippi, Missouri, Nevada, Ohio and Rhode Island. In keeping with those practices, we recommend that commissioners of the proposed New Jersey State Ethics Commission receive a stipend of \$250 per meeting, consistent with the stipend received by commissioners of the New Jersey Election Law Enforcement Commission.

**B. Vest The Commission With Much Greater Enforcement Powers Than Those Possessed By The Existing Executive Commission On Ethical Standards.**

Presently, many of the State's ethical strictures are well intended, but toothless. The new State Ethics Commission should be vested with vigorous enforcement mechanisms, as well as with responsibility for undertaking routine ethics audits and implementing mandatory ethics training programs. It should have the authority to impose a broad range of significant penalties for non-compliance and ethics violations, including: removal from office, suspension from office, demotion, public censure, reprimand, restitution of any untoward pecuniary benefits, and a rigorous fine structure, including an automatic late-filing fee of up to \$50 per day for failing to file required disclosure and authorization forms in a timely manner.

The Commission should also have express authority to adopt regulations, and to enforce Executive Orders, and the discretion to

dismiss frivolous complaints. It should be vested with civil-penalty enforcement jurisdiction (up to \$10,000 per infraction) for violations of post-employment restrictions. In that vein, the Commission's jurisdiction must be expanded to include transgressors who leave State service, provided the Commission's investigation begins within two years past the date on which the alleged violation has been committed. That expanded jurisdiction would prevent State employees from escaping civil liability for ethical breaches simply by leaving State employ.

**(1) More Stringent Enforcement Powers.**

Giving the State Ethics Commission a broad range of penalty and enforcement mechanisms will add muscle to its mandate. Our recommendations are consistent with the scope of authority afforded more formidable state ethics commissions throughout the nation. Comparable state ethics commissions have much stronger enforcement powers than the current ECES. For example, most state commissions charged with monitoring financial disclosure forms have penalty schemes in place for late filers, ranging from a one-time fee to a per-day fine, or a hybrid of both. The Ohio Ethics Commission imposes a \$10 per-day late fine, up to a maximum of \$250. Knowingly failing to file a financial disclosure form is a fourth-degree misdemeanor, with potential penalties of up to \$1,000 and six months' jail time. The Louisiana Ethics Administration Program imposes a \$50 per-day fine, up to \$1,500. The Hawaii State Ethics Commission imposes an initial fine of \$50, in addition to a \$25

per-day fine, with no maximum limit.

Those states and others vary as to whether a cap is imposed on late filing penalties and the amount of the cap. The cap limits range from \$100 in Montana and Wisconsin, to \$10,000 in New York, while at least three states, Hawaii, Texas, and North Carolina, have no caps at all. The South Carolina Ethics Commission employs a two-stage, progressive fine system, with no dollar limit. The first stage grants a five-day grace period, with a flat \$100 fine after five days have elapsed. The second stage is triggered once the commission has notified the official of the delinquency by certified mail. The fine then increases by \$10 per day for the first ten days, and by \$100 per day for each additional day the required disclosure form is not filed. South Carolina also publishes the names of delinquent filers on its ethics web page, along with the amount owed. The highest fine reported on that web site as of October, 2004, was \$84,588.

The range of civil and criminal penalties imposed by state commissions for offenses other than late filing fees also varies widely, from \$100, with no prison term in Wisconsin, to \$10,000, with a maximum five-year term of imprisonment in Pennsylvania, to a \$50,000 maximum fine in Oklahoma. Penalties associated with unjust enrichment include treble damages in Pennsylvania, and a fine based on a percentage of the amount of unjust enrichment in Nebraska.

Other common enforcement powers include removal from office, disqualification from elections, and post-employment bans. For

example, a conviction based on a violation of Ohio's ethics code can result in disqualification from holding public office or employment for up to seven years from the date of conviction.

**(2) The Power To Adopt Regulations.**

Giving the State Ethics Commission explicit statutory authority to adopt regulations is consistent with the successful experiences of other jurisdictions, such as Rhode Island. For example, by law, the Rhode Island Commission is empowered to "[p]rescribe and publish, after notice and public hearings, rules and regulations to carry out the provisions" of the Rhode Island Code of Ethics. R.I. Gen. Laws. § 36-14-9(a)(3) (2004).

**(3) Treatment Of Frivolous Complaints.**

It is essential to confer absolute immunity on the filers of any and all complaints, in order to prevent a chilling effect on legitimate, good-faith reporting. However, to minimize the potential waste of time and resources, the State Ethics Commission should be afforded broad discretion to dismiss frivolous complaints.

**(4) Jurisdiction To Proceed Against Transgressors Who Leave State Service.**

The State Ethics Commission should be vested, expressly, with jurisdiction to proceed against transgressors who leave State service. Other Jurisdictions have lamented the enforcement difficulties that post-employment enforcement loopholes present. For example, New York State officials are now endeavoring to render

state employees who leave state service subject to the jurisdiction of New York's State Ethics Commission, provided that commission's investigation begins within one year after the employee leaves public service.<sup>26</sup>

Presently, our ethics laws are silent on the Commission's jurisdiction over employees who leave State service. While ECES has proceeded against transgressors after they left State service, the Conflicts Law should be amended to explicitly authorize such actions. However, to promote repose, post-employment actions should commence within two years past the date on which the alleged violation has been committed.

**C. Require The Commission To Conduct  
Mandatory Ethics Training For All State  
Employees.**

The State Ethics Commission should be staffed with a full-time Training Officer with adequate support personnel, and charged with the responsibility of creating, coordinating, and refining comprehensive mandatory ethics training programs (both in-person and on-line). Each agency or department's Ethics Liaison Officer should be required to coordinate with the Training Officer to facilitate the ethics training programs that the Training Officer develops. Training should include mandatory annual briefings and routine refresher courses on ethics and standards of conduct for all State employees, and mandatory, annual, financial-integrity training for all State officers, all board members of State

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<sup>26</sup> See, e.g., Michael Slackman, Albany Ethics Case That Died Points to Loophole,

entities, and all employees vested with procurement-related authority.

Even if New Jersey passes the most stringent laws and implements the finest ethics code, the State will be ineffective if it fails to ensure that employees and officials are aware of their fiduciary and ethical responsibilities. Comprehensive mandatory training programs are an effective means to achieve that awareness.

The need for training was a common response among the New Jersey authorities surveyed. Of the authorities to respond with recommendations, seventy-five percent identified ethics training as an area in need of improvement. Thus, although fifty-five percent of authorities reported the existence of a formal ethics training program, many still expressed the need to expand training to encompass all employees, at all levels, as well as to increase the frequency of training sessions.

That demand for enhanced ethics training is in keeping with the larger public demand for heightened accountability in both the private and public sectors. In the private sector, the Sarbanes-Oxley financial oversight certifications required of all publicly-traded companies represent a meaningful check on the potential for abuse and provide a useful model for certain public sector domains. Although the Sarbanes-Oxley Act does not mandate ethics and monitoring training, chief executive officers and chief financial officers must certify to the integrity of the public financial

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Not a Crime, N.Y. Times, Feb. 25, 2005, at A1.

reports and the financial auditing process. Furthermore, Sarbanes-Oxley requires managerial assessment of internal monitoring controls. Thus, companies subject to Sarbanes-Oxley have sought and implemented comprehensive training programs to facilitate compliance and to provide a defense to potential liability.

Typical Sarbanes-Oxley training programs designed by outside consultants not only brief employees on company ethics policies, but also train high-level officers and supervisors in ethics monitoring. Additionally, the typical substantive ethics training focuses on those individuals who, by position and power, are more susceptible to committing violations.<sup>27</sup> The format of that training encompasses both general company-wide presentations and tailored presentations for select offices to ensure compliance. That format can and should be adapted by New Jersey to satisfy the heightened ethics strictures recommended in this Report.

Both the private and public sectors now make use of Internet-based training programs to efficiently reach the largest number of employees in the least amount of time. ECES is already a leader in on-line ethics training, as one of only twelve<sup>28</sup> states with an interactive on-line program that is easily accessible to all Executive Branch employees and members of the public. Moreover, unlike many states with such programs, New Jersey's program

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<sup>27</sup> For example, Integrity Interactive's "Risk-Based Curricula" evaluates employee risk based on a risk profile developed through an evaluation of an employee's job level, function, division, and experience in combination with the industry, type of company, location and language used. See [http://www.integrity-interactive.com/compliance/riskbased\\_curricula.htm](http://www.integrity-interactive.com/compliance/riskbased_curricula.htm).



encompasses more than just conflict of interest laws, and includes thematic modules on "Attendance at Events," "Gifts," "Executive Order 10," "Outside Activities," "Outside Activities/Special State Officers and Employees," "Post-Employment," and "Recusal."

The effectiveness of that on-line program was reflected in the audit responses we received. Of the authorities reporting a formal ethics training program, forty-six percent indicated that they successfully relied on the ECES programs to provide employee training. That strength can be built upon, to achieve 100% compliance with our recommendations for mandatory ethics training. For example, when Illinois revised its ethics laws to require ethics training for all 140,000 state officers, employees, and state university employees, the Illinois Ethics Training and Compliance Center relied primarily on an Internet-based training program which, when combined with traditional training methods, enabled Illinois to achieve 100% compliance within a one-year period.

Outside consultants are also available to develop prototypes for ethics training. Examples of such services are appended as Exhibit L.<sup>29</sup> We have concluded that employee ethics training can be

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<sup>29</sup> Strategic programs available include web-based educational components, and have been developed to support states' need to educate employees and implement training courses and course certifications. Such a program could enable the State of New Jersey to track violations electronically, to facilitate case management and appropriate disciplinary responses, as well as to provide easy training access to all employees. Outside consultants can also tailor educational programs, both in-person and on-line, to specific agencies. Each of the consultants we heard from recommended some type of risk analysis of employees and their departments to more appropriately gauge the level of training needed. Some suggestions for risk analysis include an on-line employee survey, personal interviews, focus groups to determine general attitudes toward the ethics

accomplished effectively under the aegis of the newly-formed State Ethics Commission. However, we recommend that the State Ethics Commission evaluate what role, if any, outside consultants might play in providing relevant prototypes for appropriate financial-integrity training.

**D. Enable The Commission To Perform Regular And Systematic Ethics Audits And Monitoring For Ethics Compliance.**

The State Ethics Commission should be staffed with a full-time Ethics Compliance Officer and adequate support personnel to ensure that, in each agency, all required employee disclosures are monitored for compliance and all ethics codes and notices are distributed to and acknowledged by every employee. Duties of the Ethics Compliance Officer should include tracking compliance on matters such as outside employment, business activities, gifts, financial disclosures, contacts by legislators, lobbyists, or governmental-affairs agents, procurements and contracts, and attendance at outside events.

Our recommendation is consistent with the successful models of other state ethics commissions that have at least one full-time staff member in charge of compliance. Those states include Alabama, California, Kansas, Ohio, Oklahoma, Oregon, Rhode Island and South Carolina. Among them, California is unique in employing a comprehensive auditing program, with its own full-time staff,

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compliance, and ethics monitoring systems already in place. Other services include creating on-line training modules, "train the trainer" instructor led sessions, and regular newsletter updates geared toward compliance monitors

which is part of its state ethics commission.

**E. Coordinate The Duties Of The Commission With Those Of Other Agencies Charged With Fighting Fraud, Waste, And Ethical Misconduct In Government.**

The Commission should routinely communicate and coordinate its efforts with those of the State Auditor, the Inspector General, the State Commission of Investigations, and the Office of Government Integrity of the Attorney General's Office. In the course of our investigation, several events transpired that enhanced our perception of the need to coordinate the activities of various investigative authorities within the Executive Branch.

In one of our early interviews, we discussed the role of the State Auditor with Albert Porroni, Executive Director of the Office of Legislative Services. The State Auditor is a constitutional officer (i.e., the office is created by the State Constitution), appointed by the Legislature, for a term of five years. The Office of the State Auditor performs financial post-audits of State agencies and verifies all assets, liabilities, revenues, and expenditures. The State Auditor may conduct studies of State and State-supported agencies with respect to their economy, internal management control, and compliance with laws and regulations.

It was the State Auditor's office that unearthed recent misconduct at the Commerce Commission. The former chief of staff of the Commerce Commission refused to open up her records during a routine audit of the Commission. She insisted that requests to

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providing ethics communication tools.

inspect agency documents had to be presented in writing and channeled through her. That prompted a State Police investigation, leading to evidence of misdeeds. Thus, we have considered the wisdom of enhancing the Office of the State Auditor by including within its ambit an evaluation of the ethics programs in the agencies and departments of State government.

After our appointment in November, 2004, Governor Codey created the Office of Inspector General by Executive Order, to "review procurements and public contracts; receive complaints and perform investigations to ensure programs are in compliance with State laws; conduct performance reviews to see how well programs are working and how they can be run more effectively; and look at technology and better business practices that can save time and taxpayer dollars."<sup>30</sup> Exec. Order No. 7 (Codey 2004). Under a bill intended to make that office a statutory one, the Inspector General's Office would be authorized to initiate investigations of contracts and other spending practices at every level of state, county, and local government, including school boards, commissions, and authorities. S. 2195, 211th Leg. § 7 (2004) (substitute adopted Jan. 31, 2005) (amended mar. 7, 2005).

In addition, New Jersey has a State Commission of Investigation (SCI), created in 1968, amid an intensifying problem

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<sup>30</sup> The Office of the Inspector General is also authorized to "investigate the performance of governmental officers, employees, appointees, functions and programs in order to promote efficiency, to identify cost savings, and to detect and prevent misconduct within the programs and operations of any governmental agency funded by or disbursing State funds," and "to receive and investigate complaints concerning alleged fraud, waste, abuse or mismanagement of State

involving organized crime and political corruption. The SCI was intended to have a temporary mission, and was designed to conduct fact-finding investigations, bring the facts to the public's attention, refer findings to appropriate law enforcement agencies for possible prosecution, and make recommendations to the Governor and the Legislature for improvements in laws and in the operations of government. The Commission was designed to be more than a Crime Commission, it was to "provide a significant, independent 'watchdog' for the entire system." The Commission's status as a temporary agency subject to periodic review came to an end on January 7, 2002, at which time, legislation was signed establishing the Commission as a permanent entity of New Jersey government.

Finally, the Attorney General's Office has its own Office of Government Integrity, the successor to an Inspector General's Office that was created by Governor Whitman and later dissolved.

Close attention should be paid to coordinating the functions of those various agencies, as well as any that might be created in the future, and the State Ethics Commission. Just as there are joint task forces of state and federal agencies to fight crime or pollution, there can and should be a joint task force of the several agencies to fight fraud, waste, and ethical misconduct in government. In keeping with that spirit, Inspector General Mary Jane Cooper was extremely gracious in taking time from her already full schedule to discuss the role of Inspector General with us, and

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funds." Exec. Order No. 7 §§ 5, 8 (Codey 2004).

her readiness to coordinate the functions of her Office with the functions of the State Ethics Commission.

**F. Improve Access To Ethics Advice and Information.**

The Commission should maintain the reporting hotline and website that is now in effect, adding a toll-free number to be available to the general public and to State employees for voicing concerns, making complaints, and asking questions. It is imperative that the hotline continue to be a safe and open channel for reporting transgressions. Communication must therefore continue to be privileged and confidential. Additionally, to enhance public access and promote transparency, we recommend a new requirement that all financial disclosure forms be viewable on the Commission's website.

Presently, ECES has a website that provides a large amount of information to State officials and the general public. The Conflicts Law, ECES rules, pertinent Executive Orders, Guidelines, agency codes of ethics, the names of ELOs, disclosure forms and instructions, and contact information are all available on that site.

Since the website was established, ECES staff has noted a substantial increase in contacts from the public, including queries outside of ECES' jurisdiction, such as complaints about private sector attorneys, local government officials, private contractors, and retailers. Whenever possible, the inquirers are referred to appropriate agencies.

To avoid any chilling effect, we recommend that, after ECES is reconstituted as the State Ethics Commission, its website address and appearance be changed to reflect the Commission's independence from any other State agency.<sup>31</sup>

**G. Afford The Commission A Budget Sufficient To Accomplish Its Charge.**

To implement the changes and improvements proposed in this Report, the total necessary increase to the budget allocated to the State Ethics Commission is approximately \$440,000, for a total 2006 budget of \$1,100,000. The present ECES budget of \$661,000 is low when compared to the budgets of comparable state ethics commissions of similar jurisdiction and population. Indeed, it appears that New Jersey's budget may be the lowest. Presently, ECES has a staff of ten and jurisdiction over 70,000 Executive Branch officers and employees, including officers and employees of the State colleges and universities. In contrast, Alabama, Georgia, and Hawaii each have an ethics commission with a staff of ten, but with budgets for the 2004 fiscal year of \$914,849, \$1,016,726, and \$730,000, respectively. The San Francisco Ethics Commission, also with a staff of ten, had a 2004 budget of \$1,722,389. The Rhode Island Ethics Commission, with a staff of nine, had a 2004 budget of \$942,594.

Other state commissions employing more staff had considerably higher budgets. For example, the Connecticut State Ethics

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<sup>31</sup> Currently, the Department of Law and Public Safety (LPS), is contained in ECES' web address, in keeping with computer protocols in effect when the site was

Commission, with twelve full time employees and jurisdiction over 62,470 legislative and executive branch employees and lobbyists, had a 2004-2005 budget of \$1,085,000, with an increase of \$346,464 for the 2005-2006 fiscal year. That budget increase included an allocation for the salaries of four additional full-time staff members, raising the total full-time staff to sixteen. The Ohio Ethics Commission, with a staff of twenty, including a full-time training coordinator and a compliance coordinator, only has jurisdiction over 56,500 executive branch and local officials, but had a 2004 budget of \$1,710,000. The New York State Ethics Commission, with a staff of twenty and jurisdiction over 250,000 executive branch officers and employees, had a 2004 budget of \$1,520,000. The Pennsylvania Ethics Commission, with a staff of twenty-one, had a 2004 annual budget of \$1,650,000. The Massachusetts Ethics Commission, with a staff of nineteen, had a 2004 budget of \$1,265,221.

The state ethics commissions with a 2004 budget lower than New Jersey's each had smaller staffs, ranging from Delaware's Public Integrity Commission, with a staff of two, and a 2004 budget of \$164,100, to Kansas's Executive Branch Ethics Commission, with a staff of nine, and a 2004 budget of \$629,750.

Our recommendations for the creation of Ethics Training Officer and Ethics Compliance Officer positions, together with adequate support personnel, would increase the State Ethics

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created.



Commission staff from ten to sixteen. The six personnel additions proposed would require an additional budget allocation of \$355,000, to be used for salaries. In addition, in furtherance of its expanded charge, the Commission would require approximately \$85,000 for computers, furniture, and telephones, including the cost of installing the recommended toll-free reporting hotline. We have consulted with ECES staff, who have determined that a toll-free hotline can be installed at a nominal cost. To accommodate the additional staff members, the Department of Treasury should provide for costs of additional office space, as ECES has reached the capacity of its current quarters in the privately owned building where it is currently housed.<sup>32</sup>

In consultation with ECES staff, we have also concluded that the best means of making financial disclosure forms available and easily accessible to the public is to create a structured, on-line database system that could be searched by simple name-based queries. The Election Law Enforcement Commission has implemented a similar system. The recommended system would also permit electronic filing, consistent with the Election Law Enforcement Commission model. The start up cost of installing such a system would add approximately \$100,000 to our budget recommendation.

In addition, we strongly recommend that the salaries of the State Ethics Commission's Executive Director and Deputy Director be commensurate with that of their counterparts at the Election Law

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<sup>32</sup> Office lease costs are paid by the Department of Treasury, and are not

Enforcement Commission. The current salaries of the Executive Director and Deputy Director of the Election Law Enforcement Commission are \$120,393 and \$113,190, respectively. In contrast, the salaries of the Executive Director and Deputy Director of ECES are \$111,255 and \$103,620, respectively. We have observed extensively the exceptionally fine work performed by the ECES Executive Director and Deputy Director and, we add, their equally outstanding counterparts at the Election Law Enforcement Commission. All four positions are vitally important, and filled by superbly qualified individuals who are unsung heroes in the pursuit of the public interest.

Finally, as previously noted, we recommend that Commissioners of the State Ethics Commission receive a stipend of \$250 per meeting. That stipend is commensurate with the Election Law Enforcement Commission stipend, as well as those employed by other state ethics commissions, including, Delaware, Iowa, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, and Rhode Island.

**2. ENACT A UNIFORM ETHICS CODE, APPLICABLE TO ALL STATE EMPLOYEES, TO CONSOLIDATE THE STATE'S SCATTERED ETHICS LAWS INTO A SINGLE ACT.**

Currently, our State ethics restrictions are set forth in a multitude of separate codes and in the regulations of a myriad of diverse agencies. Uniform baseline standards of conduct should be enacted and made applicable to all State employees. Our proposed Uniform Ethics Code (Exhibit A), simplifies, clarifies, and

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included in the Commission's budget.

modernizes the otherwise disparate governing strictures. Our recommendations require the State Ethics Commission to promulgate such a uniform code, binding upon the Executive Branch, which adopts all applicable provisions of our proposed Uniform Ethics Code, as supplemented by relevant agency-specific strictures.

Although the scope of the current Conflicts Law is expansive, it does not contain provisions governing public disclosure of public officials' personal financial interests and prohibiting legislative agents from accepting contingency fees to influence legislation. Notwithstanding recent executive orders have promulgated guidelines with regard to those topics, the time has come for New Jersey to heed the trend established by other jurisdictions and incorporate such laws into a Uniform Ethics Code.

**A. Public Disclosure of Personal Financial Interests of Public Officials.**

On February 28, 2002, Governor McGreevey issued Executive Order 10, which established certain ethical guidelines for the Governor's office, Cabinet-level staff, and other high-ranking officers. (Exhibit E). Executive Order 10 requires those public officials to file personal disclosure statements on behalf of themselves, their spouses and their dependent children. Those statements must include, among other things, all sources of financial income and any real and/or personal assets and liabilities exceeding \$1,000 in value. The tenets of Executive Order 10 reflect long-standing executive policies of prior governors and mirror statutory ethics requirements adopted by

several other jurisdictions, including Ohio, Ohio Rev. Code Ann. § 102.02, and Indiana, Ind. Code Ann. § 4-2-6-8.

The marked difference between Executive Order 10 and its statutory counterparts from other jurisdictions, however, pertains to the issue of sanctions. Specifically, a public official's failure to comply with the dictates of Executive Order 10 "shall constitute good cause for his or her removal from office." Such a draconian sanction presents great potential for both under-use and abuse.

Conversely, Ohio has more palatable, enforceable sanctions. Under Ohio ethics laws, failure to file a public disclosure statement constitutes a fourth-degree misdemeanor, Ohio Rev. Code Ann. § 102.99, which is punishable by a fine of up to \$250, id. § 2929.28. Indiana's law is more stringent, providing that failure to file a disclosure statement, or filing of a deficient disclosure statement, may trigger a civil penalty of \$10 per day, up to \$1000. Ind. Code Ann. § 4-2-6-8(d). Such mandatory statutory penalties would better serve the spirit of our proposed Uniform Ethics Code public disclosure requirements, than those discretionary sanctions currently provided by Executive Order 10.

**B. Prohibitions on Legislative Agents From Accepting Contingency Fees to Influence Legislation.**

Several states prohibit individuals (both public officials and private citizens) from employing another to lobby for or against any legislative, executive, or administrative action for

compensation contingent upon the outcome of that action. See, e.g., 25 Ill. Comp. Stat. 170/8. New Jersey law contains no such provision, although Governor Codey recently issued Executive Order 9 (Codey 2005), which prohibits bond-underwriting firms doing business with the State from employing or retaining "any consultant who will be paid on a contingency basis if the State engages the firm to provide such underwriting services." That order, however, does not prescribe sanctions for violations.

Prohibiting legislative agents from accepting contingency fees to influence legislation nevertheless marks an important step in restoring faith in and integrity to State government. Simply stated, agreements intended to influence government action in exchange for contingent fees should be considered void as contrary to public policy.

**3. IMPLEMENT A PLAIN LANGUAGE ETHICS GUIDE THAT CAN BE EASILY UNDERSTOOD BY ALL STATE EMPLOYEES AND THE PUBLIC.**

A Plain Language Ethics Guide should be adopted to explain clearly and plainly to all State employees and to the public the ethical standards and requirements that must be met by all Executive Branch personnel. Our Ethics Audit revealed that consistent ethics training is lacking in many vicinages of the Executive Branch, and that the body of existing New Jersey ethics statutes needs to be more accessible and comprehensible to the subject officials and employees.

As a consequence of our research, assimilation of current governing strictures, and investigation of other state and federal models, we have drafted and have appended to this Report as Exhibit B, a Plain Language Ethics Guide for New Jersey State employees. That Guide is consistent with the ethics laws now in place in New Jersey, including the current Conflicts Law. However, the Guide should be supplemented appropriately to reflect subsequent legislative changes.

The Guide's clear and concise summary of the ethics requirements is intended to be a helpful communication and training tool that will enhance employees' understanding of the ethics laws. We recommend the adoption of such a Plain Language Guide based on the simple premise that better understanding yields better compliance.

The Guide will provide State officers and employees with the information they need to make ethical decisions on a day-to-day basis. It identifies the types of issues that should be raised with an ELO, and provides general ethics advice regarding standards of conduct, conflicts of interest, gifts, nepotism, compensation, financial-disclosure requirements, and post-employment restrictions, with easy references to relevant State statutes and rules. The Guide also outlines the composition of the State Ethics Commission and its investigatory, advisory, and prosecutorial roles, and makes plain the procedures for filing a complaint.

To maximize the Guide's effectiveness, we recommend that every

State employee be required to certify that he or she has read the Guide, understands it, and vows to uphold its terms. In that way, no employee will be able to use ignorance of the law as a viable defense to an ethics violation.

**4. IMPLEMENT A BUSINESS ETHICS GUIDE THAT IS BINDING ON THIRD PARTIES THAT DO BUSINESS WITH THE STATE.**

It is not enough to impose strictures on State employees. Most ethics violations do not occur without the participation and consent of third parties. Hence, we have drafted and append to this Report as Exhibit C, a Plain Language Business Ethics Guide for third parties who conduct business with the State. The Business Ethics Guide is consistent with existing ethics laws now in place in New Jersey. In order to maximize the effectiveness of the Business Ethics Guide, we recommend that, as a prerequisite to doing business with the State, and before the consideration of any bid, all interested parties must certify, in writing, that they understand the rules of the Guide, and that they are in compliance with those rules.

The Business Ethics Guide, modeled after Executive Order 189 (Kean 1988), applies to private parties doing business with, regulated by, licensed by, or lobbying Executive Branch agencies and independent authorities, as well as to businesses that hire current or former state employees. The Business Ethics Guide delineates the general standard of behavior that is expected of all businesses contracting with the State and concisely sets forth

conflict-of-interest and gift prohibitions. It also addresses particular problem areas, such as illegal kickbacks and political contributions. Under our Business Ethics Guide, private entities conducting business with the State will be subject to strict ethical standards of fair dealing, reporting, and integrity.

Our Business Ethics Guide recommendations can be effective only to the extent that meaningful penalties are imposed for non-compliance with the required vendor certification and its terms. Those penalties should include criminal prosecution, suspension from doing business with State agencies, and/or the disqualification of any non-compliant bid submitted. Currently, there are no penalties for businesses that commit ethics violations, with the result that businesses have little incentive to aid the State in conducting business ethically. The Business Ethics Guide and requisite pre-bid certifications will ensure that businesses acting in good faith cannot unwittingly violate New Jersey's ethics laws and regulations out of ignorance. The recommended penalties for non-compliance should deter bad-faith violations.

##### **5. PROVIDE LEADERSHIP FROM THE TOP.**

The Governor should set the appropriate tone and lead by example and initiative to avoid even an appearance of impropriety. A repeated theme was heard in our consultations with ethics officials from across the nation —leadership must come from the top. Very early on in our investigation, former cabinet officers



expressed the same sentiment. They recited their experiences with former Governors and impressed us with how those Governors had set an ethical tone for their administration from its outset. We were impressed too that another Governor had invited Rita Strmensky, Executive Director of ECES, to attend regular meetings of the Cabinet. Conversely, we also heard accounts of administrations that used private sector lawyers, rather than ECES or the Attorney General's Office, to advise prospective State employees of their ethical duties. While that may have been expedient and technically legal, it set a bad tone, sending the wrong message to those employees.

In order to ensure leadership from the top, we recommend that:

- The Executive Director of the State Ethics Commission meet with every new Cabinet member shortly after inauguration.
- The Executive Director of the State Ethics Commission appear before the Cabinet at least once each year to remind all members of the ethics strictures.

The Governor's Code of Conduct (Exhibit M), was promulgated by an independent advisory panel pursuant to Executive Order 77 (McGreevey 2003), and contains thorough and significant strictures, consistent with the core premise that leadership and direction must come from the top.

Building a strong ethical culture in government is not easy. It demands work. A Governor can set the example by:

- Ensuring regular departmental review of the code of ethics and compliance with that code.

- Providing ELOs with the authority to discuss key issues directly with department heads and the Governor's staff.
- Refreshing the administration's commitment to ethics with periodic presentations to the Cabinet and to major State agencies.

In the private sector, widely-publicized corporate scandals at companies like Enron, Tyco, and Marsh & McLennan have shown what is wrong with ethics in the business-place. However, those scandals have also contributed to public education on leadership in ethics.

Business Week, for example, has written that, "Leadership must create an environment where honesty and fairness is paramount. If integrity is to be the foundation for competitiveness, it has to begin at the top . . . . The CEO must set the company's moral tone by being forthright and by taking responsibility for any shortcomings." Special Report: The Crisis in Corporate Governance, Bus. Week Mag., May 6, 2002, available at [http://www.businessweek.com/magazine/content/02\\_18/b3781708.htm](http://www.businessweek.com/magazine/content/02_18/b3781708.htm).

That principle applies in governments, as well. The obligation to enforce our State's ethics laws rests, ultimately, with the Governor, but independent oversight must be ensured. Hence, we recommend strengthening the system from top to bottom.

Harry Truman said of the role of the chief executive, "The buck stops here." By the same token, a Governor should say, "I must take a stand. I must not pass the buck. I have a personal obligation to provide ethical leadership to others. I will endeavor to embody trustworthiness, respect, and responsibility and to share

those ethical principles with others and to measure every action by asking whether my personal decisions will work for the common good." That may translate into less partisanship, but, as Mark Twain said, "Always do right. This will gratify some people and astonish the rest."

**6. CLOSE THE REVOLVING DOOR OF UNDUE INFLUENCE BY ADOPTING RIGOROUS POST-EMPLOYMENT RESTRICTIONS AND EFFECTIVE FOLLOW-UP PROCEDURES.**

Presently, a general post-employment restriction prohibits a former State officer or employee, or special State officer or employee, from representing or acting on behalf of a party other than the State in connection with any matter in which the employee was substantially and directly involved during his or her State tenure. That is a lifelong restriction, but the only enforcement mechanism is a disorderly-persons penalty, which has never been imposed.

To construct laws that are stronger, realistic, and readily enforceable, we recommend:

- A new, explicit lifetime ban on all former State officers' and employees' use of confidential information.
- A general two-year post-employment restriction prohibiting a former State employee from representing an entity on any matter that he or she was substantially and directly involved in while in State service. That ban would allow highly qualified individuals to enter government service with the expectation that they will be able to continue to earn a living after they leave State employ. Consistent with the experience of other jurisdictions, after two years, former State employees are apt to be sought by a new employer for their expertise, rather than for their ability to influence.

- A new one-year ban on "side-switching," to apply to designated State officers, heads, deputy heads and assistant heads of principal departments, boards, commissions and authorities. That ban would prohibit such an employee, for one year after leaving State service, from representing anyone on any matter before the agency in which he or she was employed. Our investigation revealed the significant concern about the appearance of impropriety that arises when a former senior official appears before his or her agency shortly after leaving government service.
- Greatly enhanced penalties for violating post-employment restrictions, applicable to both former employees and their new employers. Those penalties should include fines of up to \$10,000 per offense.

**A. General Post-Employment Restrictions.**

The Conflicts Law contains two post-employment restrictions. Section 17, a general restriction, provides that no former State officer or employee is permitted to represent or act on behalf of a party other than the State in connection with any matter in which he or she was substantially and directly involved during his or her State tenure. That restriction also applies to any partnership, firm, or corporation in which the former officer or employee has an interest (more than 10% ownership or control), and to professional service corporations with which he or she is affiliated. It is a life-long restriction and carries a disorderly-persons penalty. The Commission issues opinions as to whether a given set of circumstances violates the post-employment restriction, and has made referrals to the Division of Criminal Justice over the years when allegations of violation have been made and substantiated through Commission staff investigations. However, no post-

employment violation has ever been prosecuted.

Several agencies of New Jersey State Government have agency-specific bans. For example, the Board of Public Utilities Code of Ethics contains the general Section 17 post-employment ban, as well as a six-month ban on appearances before the Board. The Commission staff has felt for many years that changing the penalty to a civil penalty would actually add more strength to that prohibition. Previous Commissions have expressed frustration with the lack of prosecution, and would undoubtedly have engaged in enforcement actions if permitted by law. In short, this is a significant enforcement problem area, and the lack of enforcement sends an unmistakable message to State employees that the only punishment for a violating the post-employment ban may be bad publicity.

A major weakness in the current law is the absence of an agency ban as applied to former senior officials. As noted, thirteen jurisdictions, including the Federal Government, impose bans of varying lengths on former officials appearing before their former agencies on behalf of private clients. Our investigation revealed the significant concern about the appearance of impropriety that arises when a former senior official appears before his or her agency shortly after leaving government service.

In addition, the current penalties are, essentially, toothless.

Accordingly, we make the following recommendations: (1) a lifetime ban should be imposed on all former State officers' and employees' use of confidential information; (2) the ban on

representation in specific matters in which the employee had substantial responsibility should be limited to two years; and (3) there should be a one-year ban on side-switching, to apply to designated State officers, heads, deputy heads, and assistant heads of principal departments, boards, commissions and authorities.

In addition, greatly enhanced penalties for violating post-employment restrictions should be applicable to both former employees and their new employers.

Consistent with those recommendations, Section 5 of our Proposed Uniform Ethics Code changes the post-employment restrictions and eliminates the disorderly-persons penalty. Our reasoning for recommending the replacement of the lifetime ban on acting in specific matters is two-fold. We believe that a lifetime ban is unnecessary and oppressive. Indeed, a majority of jurisdictions do not perceive a need for a lifetime ban. Further, retention of the lifetime ban on the use of confidential information and the new agency ban effectively promotes the public interest. We believe that the lifetime ban is unduly oppressive, insofar as it unreasonably hampers the careers of public-spirited individuals who devote a portion of their careers to public service. Consider the example of an assistant commissioner or division director in the Department of Transportation who may have been involved in the design of an access ramp on a State highway in 2003. Then consider whether, in 2010, for example, there is any possible prejudice to the State or the public if that person

counsels a homeowners' association about the redesign of that ramp due to new development in the area.

**B. Casino Post-Employment Restrictions.**

There is also a two-year employment and representation ban with respect to casino-license holders. That ban applies to individuals defined as "persons" in Section 17.2(a) of the statute, to immediate family members of those "persons," and to any partnership, firm, or corporation with which those "persons" are associated or have an interest. Generally, "persons" are those individuals in the Executive Branch who are required to file financial-disclosure statements by law or Executive Order.<sup>33</sup> Other "persons" are members of the Legislature, full-time members of the Judiciary, all full-time professional employees of the Governor's Office and the Legislature, members of the Casino Reinvestment Development Authority, members of the governing body, the municipal judge, and the municipal attorney of any municipality wherein a casino is located, as well as members of or attorneys for the planning boards and zoning boards of adjustment and professional planners or consultants employed by the planning boards or zoning boards of adjustment in municipalities wherein a casino is located. The ban, as applied to immediate family members, can be waived by the Commission.

The casino-related restrictions have stood the test of time.

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<sup>33</sup> L. 2001, c. 075 exempts from the restriction, under conditions of proper screening, any law firm with which a former member of the Judiciary is associated, and any partner, officer, director or employee of such law firm.

Although burdensome, they are not onerous, and they are justified by the nature of the industry. In one respect, we recommend modification. A waiver provision should be added to the post-employment casino ban because many individuals in the Executive Branch of government who are affected by that ban have no involvement in the course of their official duties with gaming activities. The ban was originally enacted following the Abscam scandals of 1978,<sup>34</sup> when other casino restrictions were put in place to assure the citizens of New Jersey that there would be no exchanges of untoward advantage between the government and casinos. More than twenty-five years of experience has shown that the post-employment ban, as applied to State officials with no involvement in gaming, is burdensome and counterproductive with respect to the recruitment of professionals such as lawyers and certified public accountants because the ban applies not only to those individuals, but also to any firms with which they become associated after leaving State government.

In Section 6 of our Proposed Uniform Code, the above-described waiver for post-employment restrictions has been added as subsection (c)(1). By providing no separate penalty subsection in Sections 5 and 6, our proposed code places jurisdiction with the State Ethics Commission, which would treat violations of those two

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<sup>34</sup> In 1978, the FBI created a front, Abdul Enterprises, Ltd. (Abscam) for its agents, who, posing as associates of an Arab sheik, offered targeted public officials money or other consideration in exchange for special favors. Among those indicted and convicted were public officials of the State of New Jersey who were importuned to influence casino-related activity.



sections as they would be treated under the penalties prescribed by Sub-section 10(i).

### **C. Recommendations For Change.**

Our post-employment recommendations are based upon the more effective restrictions in place in other large cities and states. For example, New York City's stringent Conflicts of Interest Law<sup>35</sup> imposes rigid standards of conduct on all city officials and employees. Among its post-employment restrictions are: a lifetime ban on working on any matter in which the former employee had personal and substantial involvement; a two-year ban on former officials from appearing before city agencies on behalf of private interests they dealt with in office; and a one-year prohibition on acceptance of anything from anyone for communicating with their former agency.<sup>36</sup> In addition, New York City prohibits anyone, whether a current or former employee, or member of the public, from inducing others to violate the conflicts law or regulation. Penalties for violating the New York City Conflicts Law include fines, suspensions or dismissals.

The post-employment provisions within New York City's

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<sup>35</sup> New York City's Conflicts of Interest Law, City Charter §2604, is contained in Chapter 68 of the City Charter and is generally known as the City's "Ethics Law." See COIB: Conflicts of Interest Board of the City of New York, website, at <http://www.nyc.gov>. The Conflicts of Interest Law was adopted in 1959 after decades of misuse of office, misuse of government funds, flagrant conflicts of interest, nepotism and other largely unpunished misdeeds, many attributed to Tammany Hall, the powerful Manhattan Democratic organization.

<sup>36</sup> For higher level officials, including elected officials, deputy mayor, chair or head of a city office or commission, this post employment ban is stricter, barring acceptance of anything from anyone for communicating with any part of such higher official's former branch of city government.

Conflicts Law acknowledge the importance of regulating post-employment activities in the overall effort to protect the public trust. "City administrations change . . . but the fundamental concepts of ethics as written into law are ageless because they have inherent in them the object of government in our Republic — to be fair to the people who serve and who are served by our municipality." Robert D. McFadden, Stanley Kreutzer, 98, Author of New York City Ethics Code, N.Y. Times, Feb. 22, 2005, at B9 (quoting S. Stanley Kreutzer). That is the simple premise upon which our post-employment recommendations are based.

The concept of post-employment restrictions is not unique to the public sector. Courts have long recognized the rights of private employers to include restrictive covenants in employment and contracts to limit an employee's actions, post-employment, provided such restrictions are specific in scope and limited in time. Although employment restrictive covenants that are indefinite are generally unenforceable, typically a two-year period or less is enforceable, depending on the circumstances. Furthermore, because courts view the issue as one of restraint of trade, an employer must demonstrate that the post-employment restriction addresses a legitimate harm to the employer before a restrictive covenant may be imposed on an employee.

In the public sector, because the employer is a government, the employer's interest is great: preservation of the public trust and protection of the public interest. Thus, a government must

balance its desire to minimize the hardship to its employees against any appearance of impropriety that could affect the public trust. The prospect of outside employment can create a real or perceived conflict of interest for employees who may obtain preferential treatment or privileged access to government after they leave office. For example, a former employee may have access to government entities that others would not have, could take personal advantage of information obtained in the course of government employment, or could use public office as an unfair advantage to gain future employment.

Although the potential for harm is great, just as courts require that private-sector post-employment restrictive covenants be reasonable, any post-employment restrictions on public employees must also be reasonable. A "revolving-door" prohibition should not impose greater restraints than are necessary to protect legitimate government interests.

To aid in our determination of what is reasonable, we have examined the laws of our sister states and of the Federal Government. Our review has revealed that most government ethics codes generally restrict employees from representing others before their former departments for a specified period of time, ranging from six months to two years. Connecticut, for example, imposes a two-year agency ban on all employees, as do New York State and New York City. Several federal agencies also impose two-year bans. Similarly, former employees are restricted from advising others on

policies and programs over which such employees had a significant interest or involvement during their government tenure. In order to alleviate the hardship on the former employee, many codes allow a former employee to represent entities before other government departments, as the perception of unfairness attached to lobbying an employee's former department is absent in those instances.

One workable solution can be found in the United States Department of Defense regulations, which provide the following two-year ban:

For two years after leaving Federal service, former employees are prohibited from communicating with or appearing before a current Federal employee with the intent to influence official matters involving non-Federal parties that were under the former employee's "official responsibility" during his or her last year of Federal service.

[Information Paper: Representations of Local Reuse Authorities by Former Army Personnel, Aug. 8, 1997 (summarizing the post-employment restrictions under 18 U.S.C.A. § 207), available at <http://www-tradoc.army.mil/sja/webdocs/ethics/BRAC.htm>.]

That restriction balances the interest of government and the individual because it permits the former employee to engage in "behind-the-scenes" assistance to a new outside employer in connection with its communications to, or appearances before, federal agencies.<sup>37</sup> In contrast, the post-employment restrictions codified in 18 U.S.C.A. § 207,<sup>38</sup> only bar former Federal Executive

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<sup>37</sup> Provided, however, that a former employee may not participate in a matter in which such former employee had been substantially and directly involved during State service.

<sup>38</sup> 18 U.S.C.A. § 207 was enacted in 1962 and, although amended several times and most significantly in 1989 by the Ethics Reform Act, has remained the primary

Branch employees' oral or written communications to, or appearances<sup>39</sup> before, federal employees as a private-sector employer's representative.

Finally, at our request, ECES staff researched the nature of post-employment restrictions in thirty-two jurisdictions. Of the thirty-two jurisdictions, including New Jersey and the Federal Government, thirteen have lifetime bans on former employees' activities associated with any matter in which he or she had substantial involvement. Of those thirteen, eight also have a ban of one or two years on appearing before or dealing with one's former agency. Of the nineteen jurisdictions that do not have a lifetime ban, fourteen have one- or two-year bans on activities associated with any matter with which a former employee had substantial involvement. A few jurisdictions have restrictions on seeking or holding employment with entities that did business with, were regulated by, or had contracts with the former employee's former agency. Those restrictions run for one or two years. Set forth is a chart summarizing post-employment restrictions in other jurisdictions.

**Post Employment Restrictions in Other Jurisdictions**

State	Lifelong Ban re: Specific Matters	Ban re: Specific Matters	Ban on Dealing with Former Agency	Limitations re: New Employer
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source of post-employment restrictions applicable to executive branch officers and employees.

<sup>39</sup> Depending on the circumstances, attendance at a government meeting could constitute such an appearance.

Alabama	No	2 years	2 years	
Alaska	No	2 years	No	
Arizona	No	1 year	1 year	
California	Yes		No	
Connecticut	Yes		1 year	Cannot seek employment with an interested party; duration of ban depends on former position and duties.
Delaware	No	2 years	No	
Florida	Yes  (depends on level of former position)	2 years  (depends on level of former position)	2 years	
Hawaii	No	1 year	No	
Illinois	No	1 year	No	1 year ban on employment by an interested party. Waiver possible.
Indiana	No	1 year  (waiver possible)	No	

Iowa	No	2 years	2 years	
Kentucky	No	1 year	6 months	
Louisiana	No		2 years	Cannot provide contractual services to former agency for 2 years.
Maryland	Yes			
Massachusetts	Yes		1 year	Prohibits high-level employees from joining an entity with a privatization contract. Waiver possible.
Mississippi	Yes			
Missouri	Yes		1 year	
Montana	No	1 year	No	
Nevada	No			1 year restriction on dealing with an interested party.
New Hampshire	No	1 year	No	
New Mexico	Yes	No	1 year	

New Jersey	Yes	No	No	
New York	Yes	No	2 years	
Ohio	No	1 year		
Oregon	No		2 years	1 year restriction on dealing with an interested party.
Pennsylvania	No	2 years	1 year	
Rhode Island	No		1 year	
South Carolina	No	1 year	1 year	1 year ban on employment by an interested party.
Texas	No		2 years	
Washington	Yes			1 year ban on employment by an interested party; 2 year ban on having an interest in certain contracts.
Wisconsin	Yes	1 year (for judicial or quasi-judicial proceedings)	1 year	
Federal Government	Yes		1 year (Senior and very senior former)	



			officials have expanded time and appearance restrictions.	
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**7. STRENGTHEN ANTI-NEPOTISM LAWS.**

The Legislature's 2004 enactment prohibiting certain relatives of State officials from serving in State government positions, N.J.S.A. § 52:14-7.1, was a step in the right direction. Currently, however, there are no enforcement mechanisms or penalty provisions in the statute to ensure compliance. Therefore, we recommend the following:

- Make N.J.S.A. § 52:14-7.1 part of the Conflicts Law, giving the State Ethics Commission authority to impose a broad range of penalties for violations.
- Prohibit State officers and employees from participating in decisions to hire, retain, promote or determine the salaries of immediate family members, cohabitants, and persons with whom the officer or employee has a dating relationship.
- Prohibit State officers and employees from supervising or exercising authority over immediate family members, cohabitants, and persons with whom the officer or employee has a dating relationship.

Those strictures are contained in our proposed Uniform Ethics Code. (Exhibit A).

**8. IMPOSE THE ETHICS LAWS ON ADMINISTRATION TRANSITION TEAMS.**

The ethical responsibilities and obligations of a newly-elected State administration begin not on a governor's inaugural

day, but on the very first day that a transition team is formed. Policies and operational and personnel decisions are forged during a transition. Consequently, the public trust is involved. Currently, transition teams are not subject to the ethics laws applicable to other Executive Branch employees. To increase public confidence, we recommend that all full-time, paid transition team members:

- Be subject to the constraints of the ethics laws immediately upon appointment, and that their salaries and sources of income be fully disclosed.
- Be notified of the ethics and conflicts laws and receive ethics training immediately upon appointment, and that they be required to certify, in writing, that they are in compliance with those strictures, including all financial disclosure requirements.

We also recommend that the Gubernatorial Transition Act, N.J.S.A. 52:15A-1 to -5, be amended to subject full-time, paid transition team members to the Conflicts Law.

**9. ENSURE TRANSPARENCY AND PROMOTE INTEGRITY IN THE PROCUREMENT PROCESS.**

In the course of our investigation, we interviewed a senior cabinet officer from a prior administration. He related to us two experiences that influenced him profoundly. The first was an experience with the then-governor, who gathered his team around him on the first days in office and said, "Ladies and Gentlemen, this is the way that it is going to be. We will play it straight. There will be no ethical shortcuts in my administration." The

unforgettable impact of that message lasted throughout that governor's term of office.

However, the same cabinet officer's subsequent experiences with private-sector relationships in succeeding administrations left him disillusioned. He related that he submitted a professional services proposal to administration contracting officers. Despite the fact that he was the low bidder on several proposals, the contracting officers kept re-bidding the job, presumably, to avoid awarding him the contract. He sensed, and we agree, that career officials who are forced to play games with bidders are dissuaded and discouraged from the effective performance of their duties. He recommended a mandate that once the procurement process has started, senior procurement officers be shielded from contact by legislators, lobbyists, and even Executive Branch officials.

The same concept of a protective shield around the bidding process was suggested to us in materials furnished by the Honorable Alan Rockoff, Executive Director of the SCI. We later had discussions with W. Cary Edwards, Commissioner of the SCI, who ordered a canvass of relevant SCI recommendations.

We explored the concept of a protective zone in discussions with Cabinet officers, past and present. They were not enthusiastic about a complete ban on contacts, recognizing that legitimate consultation is needed between procurement officers and parties providing goods or services. We considered the concept of

a reporting system. If there had to be contacts, memorialize them. This, too, met a lukewarm reception. One of the reasons, we believe, is that honest people sense no need for the monitoring of their activities. But we find a useful analogy in the law-enforcement context. Police investigating crimes are required to keep notes of the investigation. In a number of cases, courts have cautioned against the destruction of interview notes upon preparation of the law enforcement officer's report, pointing to the difficulty that would be encountered at the trial in determining defendant's rights when the trial judge is unable to see the notes. See United States v. Thomas, 282 F.2d 191, 194 (2d Cir. 1960); United States v. Johnson, 337 F.2d 180, 202 (4th Cir. 1964); United States v. Bundy, 472 F.2d 1266 (1972). The salutary effect of note taking is that it tends to keep people honest.

Based upon those recommendations and other recent developments, we recommend changes in the procurement process, especially in the no-bid area of specialized service. Transparency in the procurement process, coupled with scrutiny provided by the Office of the Inspector General in coordination with the State Ethics Commission, is essential to deter, as well as to remediate abuse.

The Karcher-Scutari Bill is an important part of the solution.

That bill would require State officials who deal with potential contractors to keep written records of contacts with vendors once a matter has entered the procurement process. Those contacts would

then become public information after negotiations are completed, alleviating any appearance of impropriety.

**A. The E-ZPass Report.**

The Karcher-Scutari Bill was a response to the SCI's June 2004 probe into the E-ZPass financial debacle, which exposed a procurement process prone to abuse, without proper oversight and accountability. In its report, "E-ZPass: The Making of a Procurement Disaster,"<sup>40</sup> the SCI found that senior officials of the New Jersey Turnpike Authority and the State Department of Transportation had engaged in widespread mismanagement and manipulation of the contracting process. The SCI report revealed that the E-ZPass contract was based on a flawed projection that the electronic toll system would pay for itself, through fines paid by toll violators. That projection was accepted with virtually no scrutiny by State officials charged with overseeing the contract, resulting in hundreds of millions of dollars of debt. Ultimately, the SCI report faulted the State for its lax contract oversight, use of untrained contract evaluators, and atmosphere permitting undue pressure from superiors to obtain underlings' approval of the vendor's projections.

Because of the E-ZPass debacle, the SCI concluded that something needed to be done to safeguard the integrity of contracting procedures vital to the public interest. Additionally, it was apparent that the existing procurement process lacked proper

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<sup>40</sup> Available from the Office of the Governor's Counsel.

oversight and accountability, which left it prone to abuse.

**B. The Karcher-Scutari Bill.**

On December 13, 2004, Senators Ellen Karcher and Nicholas Scutari introduced S-2194. That bill seeks to re-structure State purchasing procedures and to implement reforms recommended by the SCI after its probe of the E-ZPass electronic toll-collection contract.

The bill would require State-authorized vendor evaluators to be proficient in the area of the contract and to have relevant experience to assess a project. In addition, the bill would restrict the type of State contract that could be awarded as a "professional service," in which the normal bidding process could be bypassed. The bill would also require State officials who deal with potential contractors to keep written records of contacts with vendors, which would become public information after negotiations are completed.

Other key aspects of the bill include:

- Permitting State agencies to post notices of intent about upcoming contracts on the Internet, to solicit information from potential bidders.
- Banning members of contract-evaluation committees from having any family ties, personal interests, or financial links to potential vendors.
- Requiring the Director of the Purchase and Property Division to promulgate regulations concerning contract oversight and monitoring contract performance.
- Authorizing the Director of the Purchase and Property Division to enter into bulk-purchase agreements with other states or agencies for supplies deemed necessary

for domestic preparedness and homeland security.

- Requiring all State employees who communicate with potential or actual bidders on contracts to keep written records of those contacts for at least three years.
- Creating a State Contract Manager to oversee and monitor complaints and to settle disputes about vendor performance in all major State contracts, establishing a clear line of authority.

### **C. Recommendations For Change.**

Each measure of the Karcher-Scutari Bill constitutes a significant step toward safeguarding the integrity of New Jersey's contracting procedures and restoring the public's trust in the way our government does business. However, in order to close the circle of improper influences, we recommend that the Bill be amended to clarify that it is not just communications between vendors and purchasing agents that must be recorded, but also communications between purchasing agents and lobbyists, consultants, legislators, legislative staff, and Executive Branch members.

Miami Dade County calls such a system a "Cone of Silence," "designed to protect the integrity of the procurement process by shielding it from undue influences prior to the recommendation of contract award." The Cone of Silence falls over contracts after advertisement.

The Dade County Cone of Silence also prohibits oral communications regarding a particular bid or request for proposal (RFP) between potential vendors, service providers, bidders,

lobbyists, and consultants and:

- the Mayor, County/City Commissioners and their respective staffs;
- the County/City Manager and his or her staff;
- the County's/City's professional staff; and
- any member of the respective selection, including the County/City Manager.

The Cone of Silence also prohibits oral communications regarding a particular bid between the Mayor, County/City Commissioners or their respective staffs and any member of the County's/City's professional staff, including the County/City Manager and his or her staff. In addition, the Cone of Silence prohibits oral communications regarding a particular bid, between the Mayor, County/City Commissioners or their respective staffs, and any member of the respective selection committee.

We recommend the enactment of the Karcher-Scutari Bill, with amendments to clarify that it will protect the integrity of the procurement process by putting all procurement-process contacts in writing. If a contact is above-board, there is no reason that it should not be in writing.

#### **10. ADOPT A ZERO-TOLERANCE POLICY ON GIFTS.**

Last year, the Legislature passed a law allowing Executive Branch officials to receive \$250 total value in gifts, annually, from governmental affairs agents, thereby conflicting with current ECES guidelines. To eliminate confusion and render the gift ban



more rigorous, we recommend:

- A new, simple flat ban, prohibiting all Executive Branch employees from accepting any and all gifts or other things of value from any source other than the State for any matter related to their official duties. That zero-tolerance policy will establish a clear, bright-line standard that is easy to apply and that helps to avoid even an appearance of impropriety.

Presently, there are three provisions in the Conflicts Law that deal with receipt of things of value. Section 14 provides that no State official shall accept anything of value which s/he knows or has reason to believe is offered with the intent to influence the performance of public duties and responsibilities. Section 23(b)(6) provides that no State official should accept anything of value under circumstances from which it might reasonably be inferred that the gift or thing of value was given or offered for the purpose of influencing the discharge of official duties. Section 24 provides that no State official shall solicit or receive 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 for any services, advice or assistance related to the officials public duties, with a few enumerated exceptions. Those restrictions apply to all State officers and employees and special State officers and employees in the Executive Branch.

In 2004, the Legislature added section 24.1 to the Conflicts Law and specifically allowed State officials in the Executive Branch as well as members of the Legislative Branch to accept up to

\$250 worth of gifts and things of value per year per lobbyist or governmental affairs agent. The Executive Commission on Ethical Standards promulgated N.J.A.C. 19:61-6.9 to -6.10, formalizing the gift guidelines and adding a provision that Executive Branch officials are not permitted to accept anything of value from interested parties. Lobbyists or governmental affairs agents with matters pending before a particular agency would be interested parties with respect to that agency.

We recommend that Section 24.1 of the Conflicts Law be repealed with respect to the Executive Branch and that Executive Branch employees be prohibited from accepting any and all gifts or other things of value from a source other than the State for any matter related to their official duties. A gift of nominal value available to the public generally would not violate this standard.

Our nationwide search revealed three principal types of restrictions on gifts: (1) zero-tolerance laws, prohibiting the receipt of any gift or thing of value; (2) laws that impose a ceiling on permissible gifts, ranging from \$50 to \$500; and (3) laws that restrict only gifts that influence official action. The latter two models present significant disadvantages, raising problems of valuation and interpretation. By contrast, a zero-tolerance policy with respect to prohibiting any and all gifts, related in any way to the employee's or officer's official duties imposes a clear bright-line standard that is easy to administer and avoids the potential for abuse.



## CONCLUSION

A fundamental principle of democracy is that a representative government must hold the public's trust. All government exists by the consent of the governed. Scandals undermine public trust in the integrity of government and threaten the fundamental premise of democracy. Yet the problem of mistrust is not new. Abner Mikva, a distinguished judge who lived an exemplary public life, said:

America has grown highly distrustful of its government and its leaders. Americans seem to expect and believe the worst about government, even if there is no evidence to back up the case. It's true that this paranoia isn't altogether a new problem. There were suspicions about government going all the way back to our founding. Much of the criticism of the Constitution during the ratification struggle stemmed from distrust about what government would do. Pieces of the Constitution, and most of the Bill of Rights were aimed at protecting the people from their government. The "Know Nothings" of the last century, the anarchist movement of this century, some of the constitutional proposals currently in vogue — all stem from suspicions or beliefs that government and its actors are corrupt.

[Abner J. Mikva, Ethics In Government: Not an Oxymoron, Lecture upon receiving 1998 Paul H. Douglas Ethics in Government Award (March 1, 1998), <http://www.igpa.uillinois.edu/ethics/lecture-Mikva.htm>.]

Today in New Jersey, the public trust has been broken and, as a result, the actions of political leaders now face more skeptical investigation than ever before. How do we restore the trust? Unethical or improper behavior on the part of State officials or employees is the exception, not the rule, but we are nevertheless

reminded, from time to time, that our laws and regulations may not be adequate to the times and circumstances.

The best answer to potential ethical problems in government is honest people in a proper and ethical environment. No regulation can cope with a person determined to challenge the public interest and public trust. Still, formal regulation is required. Clear rules regarding performance and punishment have an important role to play in the task of ethics reform. Moreover, they can express the core values of an organization and set governing standards.

But expression of core values is not enough. Michael Josephson of the Josephson Institute of Ethics cautioned us against "over-legalizing" the system. In his view, that encourages an attitude of gamesmanship that honors no more than the letter of the law and creates the attitude, "If it's legal, it's ethical." Josephson encourages creation of a cultural climate of ethics that will pervade the target institution. Building such values within an organization requires leadership.

The public yearns for assurance that it can rely on the integrity of its elected and appointed leaders. People want leaders reaching beyond compliance. They want evidence that leaders are making an ethical culture the central hub of governance. They want to see leaders who will guide managers at all levels to do the right thing, when faced with tough decisions. They want to see less partisan politics and more public interest politics. And they want to see greater transparency in all aspects of activity, so as

to be able to better monitor ethical performance.

In her speech on the Occasion of the Opening of the Governor General's Canadian Leadership Conference 2004, Her Excellency the Right Honorable Adrienne Clarkson reminded us that when we speak of leadership, we are not necessarily talking about "charismatic leadership, the woman or man who is going to lead our government . . . out of the wilderness by dazzling all with his or her brilliance, or by 'making the tough decisions.'" Adrienne Clarkson, Speech on the Occasion of the Opening of the Governor General's Canadian Leadership Conference 2004 (May 7, 2004), <http://www.leadership2004.ca/links/media01.cfm>.

This is the model of the leader as saviour, dynamo, hero. Actually, though, it has been found in studies of business that there is a negative correlation between this brand of leadership and sustained success. Leadership is not as solitary, as independent a function as we often think. There are wonderful leaders who watch where people are going and gently, insistently herd them from behind, rather like a good sheepdog.

. . . . Leaders deal with moral issues, many of which are not particularly valued by those elements of our society that emphasize competition and winning at all costs. . . .

[Ibid.]

Building a strong ethical culture in government is not an easy thing. It demands work. It demands a combination of clear standards, substantial employee training programs, incentives, monitoring, and example-setting from the top. With the changes recommended in this Report, and the continuing leadership that this

initiative represents, New Jersey is on the road to reclaiming its promise.

**EXHIBIT A**

**PROPOSED UNIFORM ETHICS CODE**



## INTRODUCTION

This proposed Uniform Ethics Code simplifies, clarifies and modernizes the otherwise disparate ethics strictures contained in a multitude of separate codes and regulations. It uses the existing New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28, as a base, and is a compilation of the Conflicts Law, other New Jersey statutes, bills currently pending in the Legislature, the Model Law developed by the Council on Government Ethics Laws, laws of other states and the Federal Government, and comments and suggestions from government officials, ethics and conflicts experts and the public. The internal cites to the existing Conflicts Law in sections that apply to the Executive Branch have been deleted to eliminate confusion. The standards in the existing Conflicts Law that are applicable to the Legislative Branch have not been modified in any way.<sup>1</sup>

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<sup>1</sup> This proposed Code is merely thematic. We leave the drafting to the experts in the Office of Legislative Services. For example, we have not attempted to resolve how protections afforded under the Merit Protection Law will be integrated with our proposed penalties. Moreover, this Uniform Ethics Code does not displace relevant agency-specific strictures.

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**UNIFORM ETHICS CODE**

**1. Definitions.**

As used in this Act, and unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(a) "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 or allocated to such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, 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.

(b) "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.

(c) "Member of the Legislature" means any person elected to serve in the General Assembly or the Senate.

(d) "Head of a State agency" means: (1) in the case of the Executive Branch of government, except with respect to interstate agencies, the department head or, if the agency is not allocated to a department, or is allocated to but is not subject to the supervision or control of a department, the governing body or chief executive officer of the agency; and (2) in the case of the Legislative Branch, the chief presiding officer of each House of the Legislature.

(e) "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.

(f) "Person" means any natural person, association or corporation.

(g) "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, L. 1969, c. 232 (N.J.S.A. 14A:17-1 to -18); 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, L. 1977, c. 110 (N.J.S.A. 5:12-1 to -210). The provisions of this Act governing the conduct of individuals are applicable to shareholders, associates, or professional employees of a professional service corporation or of any other firm, partnership, or association that provides professional services, regardless of the extent or amount of their shareholder interest in such a corporation or of the amount of the assets or profits of the firm, partnership, or association that they control.

(h) "Cause, proceeding, application or other matter" means a specific cause, proceeding, or matter, and does not mean or include determinations of general applicability or the preparation or review of legislation which is no longer pending before the Legislature or the Governor or regulations which are no longer pending before the promulgating agency.

(i) "Member of the immediate family" of any person means the person's spouse, child, parent or sibling residing in the same household.

(j) "Code of ethics" means the plain-language code of ethics promulgated for the Executive Branch of State Government or the Legislative Branch of State Government pursuant to section \_\_\_\_\_ of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), and any code of ethics adopted by a State agency pursuant to that section to apply to the particular needs and problems of that agency.

**2. State officer or employee or member of legislature; acceptance of thing of value to influence public duties.**

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.

**3. Representation, appearance or negotiation, directly or indirectly, for acquisition or sale of property by State.**

No member of the Legislature or State officer or employee shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, whether by himself or by or through any partnership, firm or corporation in which he has an interest or by any partner, officer or employee of any such partnership, firm or corporation any person or party other than the State in any negotiations for the acquisition or sale by the State or a State agency of any interest in real or tangible or intangible personal property, or in any proceedings relative to such acquisition or sale before a condemnation commission or court; provided, however, nothing contained in this section shall be deemed to prohibit any person from representing himself in negotiations or proceedings concerning his own interest in real property.

**4. Representation, appearance or negotiation on proceeding pending before particular office, bureau, etc., or State agency.**

(a) No special State officer or employee, nor any partnership, firm or corporation in which he 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.

(b) No State officer or employee or member of the Legislature, nor any partnership, firm or corporation in which he 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. This subsection shall not be deemed to prohibit a member of the Legislature or an employee on the member's behalf from: (1) making an inquiry for information on behalf of a constituent, which may include ascertaining the status of a matter, identifying the statutes or regulations involved in a matter or inquiring how to expedite a matter; (2) assisting the constituent in bringing the merits of the constituent's position to the attention of a State agency; or (3) making a recommendation on a matter or indicating support for a constituent's position to a State agency if no fee, reward,

employment, offer of employment, or other thing of value is promised to, given to or accepted by the member of the Legislature or an employee therefor, whether directly or indirectly, and the member or employee does not endeavor to use his official position to improperly influence any determination. As used in this subsection, "constituent" shall mean any State resident or other person seeking legislative assistance. Nothing contained herein shall authorize contact with State agencies by members of the Legislature or their employees which is otherwise prohibited by the criminal law, this Act, or the Code of Ethics and nothing contained herein shall authorize contact with an administrative law judge or agency head during the hearing of a contested case.

(c) Nothing contained in this section shall be deemed to prohibit any legislator, or 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:

(1) Pending before any court of record of this State;

(2) In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation);

(3) In connection with the determination or review of transfer inheritance or estate taxes;

(4) In connection with the filing of corporate or other documents in the office of the Secretary of State;

(5) Before the Division on Civil Rights or any successor thereof;

(6) Before the New Jersey State Board of Mediation or any successor thereof;

(7) Before the New Jersey Public Employment Relations Commission or any successor thereof;

(8) Before the Unsatisfied Claim and Judgment Fund Board or any successor thereof solely for the purpose of filing a notice of intention pursuant to L. 1952, c. 174, §5 (N.J.S.A. 39:6-65); or

(9) 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.

#### **5. Post-Employment.**

(a) No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment, shall use or disclose any information not generally

available to members of the public, gained during the course of his office or employment, for the benefit of any person or party other than the State.

(b) For two years subsequent to the termination of his office or employment, no State officer or employee or special State officer or employee shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, 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.

(c) For one year subsequent to the termination of his office or employment, no State head, deputy head or assistant head of principal departments, boards, commissions and authorities, or designated State officer, as defined in § 13(d)(2), 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 before any officer or

employee of the State agency in which such individual served. The provisions of this subsection shall not apply to any partnership, firm or corporation in which such person has an interest or is employed, or to any partner, officer, director or employee of such partnership, firm or corporation.

(d) 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.

#### **6. Casino-related restrictions.**

(a) As used in this section, "person" means 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 any 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 or zoning board of adjustment.

(b) 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. No special State officer or employee without responsibility for matters affecting casino activity, excluding those serving in the Departments of Education, Health, and Human Services and the Commission on Higher Education, shall hold, directly or indirectly, an interest in, 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. However, a special State officer or employee without responsibility for matters affecting casino activity may hold employment directly with any holder of or applicant for a casino license or any holding or intermediary company thereof and if so employed may hold, directly or indirectly, an interest in, or represent, appear for, or negotiate on behalf of, his employer, except as otherwise prohibited by law.

(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 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 that:

(1) a person, or any partnership, firm or corporation with which such person is associated or in which he has an interest, or any partner, officer, director or employee while he is associated with such partnership, firm or corporation may, within 2 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 if casino development, permitting, licensure or any other matter whatsoever related if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court as appropriate, holding such employment or interest in, or representing, appearing for



or negotiating on behalf of, any holder of or applicant for a casino license or any holding or intermediary company with respect thereto will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest;

(2) 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; and

(3) 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 section 59b(2) and section 60 of L. 1977, c. 110 (N.J.S.A. 5:12-59 to -60).

(4) any partnership, firm or corporation engaged in the practice of law with which a former member of the Judiciary is associated, and any partner, officer, director or employee thereof, other than the former 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 the former member shall not be barred from association with such partnership, firm or corporation, if the former member: (1) is screened, for a period of two years next subsequent to the termination of the former member's employment, from personal participation in any such representation,

appearance or negotiation; and (2) the former member is associated with the partnership, firm or corporation in a position considered "of counsel," which does not entail any equity interest in the partnership, firm or corporation.

(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.

(e) The Joint Legislative Committee on Ethical Standards and the State Ethics Commission, as appropriate, shall forthwith determine and publish, and periodically update, a list of those positions in State government with responsibility for matters affecting casino activity.

(f) No person shall solicit or accept, directly or indirectly, any complimentary service or discount from any casino applicant or licensee which he knows or has reason to know is other than a service or discount that is offered to members of the general public in like circumstance.

(g) No person shall influence, or attempt to influence, by use of his official authority, the decision of the commission or

the investigation of the division in any application for licensure or in any proceeding to enforce the provisions of this Act or the regulations of the commission. Any such attempt shall be promptly reported to the Attorney General; provided, however, that nothing in this section shall be deemed to proscribe a request for information by any person concerning the status of any application for licensure or any proceeding to enforce the provisions of this Act or the regulations of the commission.

**7. Vote, any other action by member of legislature with personal interest; prohibition.**

(a) No member of the Legislature shall participate by voting or any other action, on the floor of the General Assembly or the Senate, or in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest.

(b) A member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation, he has reason to believe that he, or a member of his immediate family, will derive a direct monetary gain or suffer a direct monetary loss. No member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation,

no benefit or detriment could reasonably be expected to accrue to him, or a member of his immediate family, as a member of a business, profession, occupation or group, to any greater extent than any such benefit or detriment could reasonably be expected to accrue to any other member of such business, profession, occupation or group.

**8. Contracts, agreements, sales or purchases with State.**

(a) No member of the Legislature or State officer or employee shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25 or more, made, entered into, awarded or granted by any State agency, except as provided in subsection b. of this section. No 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 where he is employed or an officer shall knowingly himself, by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25 or more, made, entered into,

awarded or granted by that State agency, except as provided in subsection b. of this section. The restriction contained in this subsection 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 partners or a corporation in which he owns or controls more than 1% of the stock.

(b) The provisions of subsection a. of this section shall not apply, to (a) purchases, contracts, agreements or sales which (1) are made or let after public notice and competitive bidding or, which (2) pursuant to section 5 of chapter 48 of the laws of 1944 (N.J.S.A. 52:34-10) or such other similar provisions contained in the 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 section 10 of article 6 of chapter 112 of the laws of 1944 (N.J.S.A. 52:27B-62), if such purchases, contracts or agreements, including change orders and amendments thereto, shall receive prior approval of the Joint Legislative Committee on Ethical Standards if a member of the Legislature or State officer or employee or special State officer or employee in the Legislative Branch has an interest therein, or the State Ethics Commission if a State officer or

employee or special State officer or employee in the Executive Branch has an interest therein.

**8.1. Contracts or agreements for development of scientific or technological discoveries or innovations where State has property right.**

Notwithstanding the provisions of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), a State officer or employee or a special State officer or employee or his partners or any corporation or firm in which he 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 which minimizes actual conflicts of interest and the code of ethics was approved in accordance with section \_\_\_\_\_ of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_) and the contract or agreement complies with that code procedure.

**8.2. Rental agreements with state agencies operating facilities to assist small businesses.**

Notwithstanding the provisions of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), a State officer or employee or a special State officer or employee or his partners or any corporation or firm in which he 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.

**8.3. No effect on public contract provisions.**

Nothing in this Act shall alter or affect any other applicable provisions regulating public contracts.

**8.4. Contracting with the Department of Human Services.**

(a) Notwithstanding the provisions of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), a State officer or employee may enter into a contract or agreement with a Division or other unit of the Department of Human Services, in conformance with the standards of the Code of Ethics promulgated by the Department and with the approval of the employee's Division, where the contract or agreement is for the provision of community care residential services or home instruction, with the exception of employees of the Division or other unit through which the specific contract funding flows, unless the Division or unit Director approves due to a pre-existing relationship between the employee and the client.

(b) Notwithstanding the provisions of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), a State officer or employee, who would otherwise be prohibited from entering into a contract or



agreement with a Division or other unit of the Department of Human Services for the provision of community care residential services or home instruction, shall not be prohibited from continuing to provide such services or instruction until such time as the existing relationship with the client/clients is terminated.

(c) Community care residential services shall include Division of Developmental Disabilities services as a licensed skill development sponsor in accordance with N.J.S.A. 30:11B-1 to -7; Division of Youth and Family Services services as a foster parent in accordance with N.J.S.A. 30:4C-26 to -28, or as an adoptive parent in accordance with N.J.S.A. 9:3-37 to -56; and Division of Family Development services as an approved adult-supervised supportive living arrangement provider in accordance with N.J.S.A. 44:10-54 et seq.; and any other Division approved care-giver services program in accord with the law.

**9. Representation of State agency in transaction involving pecuniary interest for legislator or State officer employee.**

No member of the Legislature or State officer or employee or special State officer or employee shall act as officer or agent for a State agency for the transaction of any business with himself or with a corporation, company, association or firm in the pecuniary profits of which he has an interest (except

that ownership or control of 10% or less of the stock of a corporation shall not be deemed an interest within the meaning of this section).

**10. State Ethics Commission.**

(a) The State Ethics Commission is established in but not of the Department of Law and Public Safety and shall be independent of any supervision and control by the department or any board or office thereof.

(b)(1) The commission shall be composed of seven members of the public appointed by the Governor, not more than three of whom shall be of the same political party. The members shall serve for terms of four years. The first members appointed pursuant to this Uniform Code shall serve as follows: two shall serve a term of four years; two shall serve a term of three years; two shall serve a term of two years; and one shall serve a term of one year. Members may be re-appointed for subsequent terms on the commission. Members shall annually elect a chairperson and vice chairperson from among their members.

(2) No member may hold office in a political party or be a lobbyist of governmental affairs agent. No member may hold office or employment in the public sector except by reason of his service on the commission.

(3) Vacancies in the membership of the commission shall be filled in the same manner as the original appointment but for the unexpired term only.

(c) Members of the commission shall be compensated at the rate of \$250 for each meeting that they attend and shall be entitled to be reimbursed for all actual and necessary expenses incurred in the performance of their duties.

(d) The Attorney General shall act as legal adviser and counsel to the commission. The Attorney General shall upon request advise the commission in the rendering of advisory opinions by the commission, in the approval and review of codes of ethics adopted by State agencies in the Executive Branch and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of State officers or employees or special State officers or employees in the Executive Branch.

(e) The commission may, within the limits of funds appropriated or otherwise made available to it for the purpose, employ, an executive director who shall administer the daily business of the commission and shall have the responsibility for employing other personnel, without regard to the provisions of Title 11A, as may be necessary.

(f) The commission, in order to perform its duties pursuant to the provisions of this Act, shall have the power to conduct

investigations, hold hearings, compel the attendance of witnesses and the production before it of such books and papers as it may deem necessary, proper and relevant to the matter under investigation. The members of the commission and the persons appointed by the commission for that purpose are hereby empowered to administer oaths and examine witnesses under oath.

(g)(1) The commission is authorized to render advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), a code of ethics promulgated pursuant to the provisions of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), or an executive order in which the Governor has granted the commission jurisdiction of its provisions. These advisory opinions shall be filed with the commission and shall be public records, but no opinion so filed shall contain the name of the person or persons who shall have requested the opinion. Any person who takes official action consistent with such an advisory opinion shall not be subject to charges of unethical conduct for violations of this Uniform Code of Ethics or the ethics regulations adopted by other agencies of State government. The commission is also authorized to develop methods to assist any State officer or employee and any special State officer or employee in understanding and complying with the obligations of that officer or employee under this Act.

(2) The commission shall promulgate such regulations and official forms and perform such duties as are necessary to implement the provisions of this Act.

(h) The commission shall have jurisdiction to initiate, receive, hear, and review complaints regarding violations by any State officer or employee or special State officer or employee in the Executive Branch, or any individual who formerly held such position if a complaint of alleged violation is received within two years past the date on which the alleged violation has been committed, or by any third person or party who shall act in participation with such State officer, employee, or special State officer, of the provisions of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), of any code of ethics promulgated pursuant to the provisions of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), or of any executive order in which the Governor has granted the commission jurisdiction. The identities of complainants to the commission shall be confidential. Any complaint regarding a violation of a code of ethics or such executive order may be referred by the commission for disposition in accordance with subsection \_\_\_\_\_ of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_). The commission shall not initiate or accept for review any allegation of violation after two years past the date on which the alleged violation had been committed. The commission shall have the power to adopt regulations establishing minimum penalties up to the amount of

\$50 for late filing of financial disclosure forms and for noncompliance with commission directives, and to impose cumulative penalties for each day of disregard of such requirements.

(i) Any person found guilty by the commission of violating any provision of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), or of a code of ethics promulgated pursuant to the provisions of L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_), shall be subject, by order of the commission, to reprimand, public censure, demotion, restitution of pecuniary benefit received because of violation, suspension and/or a fine 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, L. 1999, c. 274 (N.J.S.A. 2A:58-10 to -12). If the commission finds that the conduct of such person, given the nature and frequency of his conduct and his functions and responsibilities, evidences a careless disregard of the provisions of this Act or a code of ethics promulgated pursuant to the provisions of this Act, it may order such person removed from the person's office or employment and may further bar such person from holding any public office or employment in this State in any capacity whatsoever for a period not exceeding 5 years from the date on which the person was found by the commission to have violated

any of the provisions of this Act or of a code of ethics promulgated pursuant to the provisions of this Act.

(j) Upon a determination of guilt, all proceedings conducted under this Act shall become public.

(k) The remedies provided herein are in addition to all other criminal and civil remedies provided under the law.

**11. Joint legislative committee on ethical standards; penalties for State officers or employees found guilty by committee.**

(a) The Joint Legislative Committee on Ethical Standards created pursuant to the provisions of L. 1967, c. 229, as continued and established pursuant to L. 1971, c. 182, is continued and established in the Legislative Branch of State Government with the addition of the public members as set forth in this section.

(b)(1) The joint committee shall be composed of 12 members as follows: four members of the Senate appointed by the President thereof, no more than two of whom shall be of the same political party; four members of the General Assembly, appointed by the Speaker thereof, no more than two of whom shall be of the same political party; and four public members, one appointed by the President of the Senate, one appointed by the Speaker of the General Assembly, one appointed by the Minority Leader of the Senate and one appointed by the Minority Leader of the General Assembly.

(2) Commencing with the second Tuesday in January of the next even numbered year following the effective date of L. 2004, c. 24, the Joint committee shall be composed of sixteen members as follows: four members of the Senate, appointed by the President thereof, no more than two of whom shall be of the same political party; four members of the General Assembly, appointed by the Speaker thereof, no more than two of whom shall be of the same political party; and eight public members, two appointed by the President of the Senate, two appointed by the Speaker of the General Assembly, two appointed by the Minority Leader of the Senate and two appointed by the Minority Leader of the General Assembly.

(3) No public member shall be a lobbyist or legislative agent as defined by the Legislative Activities Disclosure Act of 1971, L. 1971, c. 183 (N.J.S.A. 52:13C-18 to -36), a full-time State employee or an officer or director of any entity which is required to file a statement with the Election Law Enforcement Commission, and no former lobbyist or legislative agent shall be eligible to serve as a public member for one year following the cessation of all activity by that person as a legislative agent or lobbyist. The legislative members shall serve until the end of the two-year legislative term during which the members are appointed. The public members shall serve for terms of two years and until the appointment and qualification of their



successors. The terms of the public members shall run from the second Tuesday in January of an even-numbered year to the second Tuesday in January of the next even-numbered year, regardless of the original date of appointment. Vacancies in the membership of the joint committee shall be filled in the same manner as the original appointments, but for the unexpired term only. Public members of the joint committee shall serve without compensation, but shall be entitled to be reimbursed for all actual and necessary expenses incurred in the performance of their duties.

(c) The joint committee shall organize as soon as may be practicable after the appointment of its members, by the selection of a chairman and vice chairman from among its membership and the appointment of a secretary, who need not be a member of the joint committee.

(d) The Legislative Counsel in the Office of Legislative Services shall act as legal adviser to the joint committee. The Legislative Counsel shall, upon request, assist and advise the joint committee in the rendering of advisory opinions by the joint committee, in the approval and review of codes of ethics adopted by State agencies in the Legislative Branch, and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of members of the Legislature or State officers and employees in the Legislative Branch.

(e) The joint committee may, within the limits of funds appropriated or otherwise available to it for the purpose, employ other professional, technical, clerical or other assistants, excepting legal counsel, and incur expenses as may be necessary to the performance of its duties.

(f) The joint committee shall have all the powers granted pursuant to chapter 13 of Title 52 of the Revised Statutes.

(g) The joint committee is authorized to render advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of this Act, of a code of ethics promulgated pursuant to the provisions of this Act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter.

(h) The joint committee shall have jurisdiction to initiate, receive, hear and review complaints regarding violations of the provisions of this Act or of a code of ethics promulgated pursuant to the provisions of this Act. It shall further have such jurisdiction as to enforcement of the rules of either or both Houses of the Legislature governing the conduct of the members or employees thereof as those rules may confer upon the joint committee. A complaint regarding a violation of a code of ethics promulgated pursuant to the provisions of this

Act may be referred by the joint committee for disposition in accordance with subsection 12(d) of this Act.

(i) Any State officer or employee or special State officer or employee in the Legislative Branch found guilty by the joint committee of violating any provisions of this Act, of a code of ethics promulgated pursuant to the provisions of this Act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter shall be fined 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, L. 1999, c. 274 (N.J.S.A. 2A:58-10 to -12), and may be reprimanded and ordered to pay restitution where appropriate and may be suspended from office or employment by order of the joint committee for a period not in excess of 1 year. If the joint committee finds that the conduct of the officer or employee constitutes a willful and continuous disregard of the provisions of this Act, of a code of ethics promulgated pursuant to the provisions of this Act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter, 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 of not exceeding 5 years from the date on which the person was found guilty by the joint committee.

(j) A member of the Legislature who shall be found guilty by the joint committee of violating the provisions of this Act, of a code of ethics promulgated pursuant to the provisions of this Act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter shall be fined 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, L. 1999, c. 274 (N.J.S.A. 2A:58-10 to -12), and shall be subject to such further action as may be determined by the House of which the person is a member. In such cases the joint committee shall report its findings to the appropriate House and shall recommend to the House such further action as the joint committee deems appropriate, but it shall be the sole responsibility of the House to determine what further action, if any, shall be taken against such member.

**11.1. Definitions regarding filing of documents with Joint Legislative Committee on Ethical Standards.**

As used in this Act, "document" means any statement, report, form, or accounting which is required to be filed with the Joint Legislative Committee on Ethical Standards within a prescribed period or on or before a prescribed date pursuant to

law or the legislative code of ethics promulgated pursuant to the New Jersey Conflicts of Interest Law, L. 1971, c. 182 (N.J.S.A. 52:13D-12 to -28). The term "within a prescribed period or on or before a prescribed date" includes any extension of time granted by the committee for filing a document.

**11.2. Timely filing of documents.**

Any document which is mailed shall be deemed to be timely filed if the postmark stamped on the cover, envelope or wrapper in which the document was mailed bears a date on or before the date of the last day prescribed for filing the document.

**11.3. Filing date falling on Saturday, Sunday, or legal holiday.**

When the date or the last day prescribed for filing a document falls on a Saturday, Sunday or legal holiday, the next succeeding business day shall be regarded as the date of the last day prescribed for filing the document.

**12. Code of ethics.**

(a) The commission shall within six months from the effective date of this amendatory and supplementary act, L. \_\_\_\_\_, c. \_\_\_\_\_ (now pending before the Legislature as this bill), promulgate and revise from time to time a plain-language code of ethics to govern and guide the conduct of State officers or employees and special State officers or employees in the Executive Branch of the State Government. Such code shall

conform to the general standards set forth in paragraphs (1) through (7) of subsection e. of this section. The head of a State agency may adopt a code of ethics, the provisions of which shall be at least as stringent as those of the uniform code, to apply to the particular needs and problems of the agency, provided that the State agency code of ethics is approved by the commission. Notwithstanding any other provisions of this section, the New Jersey members to any interstate agency to which New Jersey is a party and the officers and employees of any State agency which does not promulgate its own code of ethics shall be deemed to be subject to the uniform code of ethics promulgated pursuant to this subsection.

(b) Prior to the adoption of a uniform code the Attorney General shall provide an opinion as to its compliance with the provisions of this Act and any other applicable provisions of law. Nothing contained herein shall prevent officers of State agencies in the Executive Branch from consulting with the Attorney General or with the State Ethics Commission at any time in connection with the preparation or revision of codes of ethics.

(c) A code of ethics shall be formulated pursuant to this section to govern and guide the conduct of the members of the Legislature, State officers or employees or special State officers and employees in any State agency in the Legislative

Branch and shall not be effective unless it has first been approved by the Legislature by concurrent resolution. A State agency in the Legislative Branch may adopt a code of ethics, the provisions of which shall not be inconsistent with the Legislative Code of Ethics, to apply to the particular needs and problems of the agency, provided that the State agency code of ethics is approved in accordance with this subsection. When a proposed code is submitted to the Legislature for approval it shall be accompanied by an opinion of the Legislative Counsel as to its compliance with the provisions of this Act and any other applicable provisions of law. Nothing contained herein shall prevent officers of State agencies in the Legislative Branch from consulting with the Legislative Counsel or the Joint Legislative Committee on Ethical Standards at any time in connection with the preparation or revision of such codes of ethics.

(d) Violations of a code of ethics promulgated pursuant to this section or an executive order in which the Governor has granted the commission jurisdiction of its provisions shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. When a person who is in the career service is charged with a violation of such a code of ethics, the procedure leading to such removal or discipline shall be

governed by any applicable provisions of the Civil Service Act 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 State Ethics Commission or the Joint Legislative Committee on Ethical Standards, whichever is authorized to exercise jurisdiction with respect to the complaint upon which such action for removal or discipline is to be taken.

(e) A code of ethics for officers and employees of a State agency shall include the following general 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 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 State Ethics Commission, if he is an officer or employee in the Executive Branch, or with the Joint Legislative Committee on Ethical Standards, if he is an officer or employee in the Legislative Branch;



(3) No State officer or employee or special State officer or employee should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others;

(4) No State officer or employee or special State officer or employee should act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment;

(5) 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;

(6) No State officer or employee or special State officer or employee should accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties;

(7) 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;

(8) Rules of conduct adopted pursuant to these principles should recognize that under our democratic form of government public officials and employees should be drawn from all of our society, that citizens who serve in government cannot and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are government officials and employees have a right to private interests of a personal, financial and economic nature; that standards of conduct should separate those conflicts of interest which are unavoidable in a free society from those conflicts of interest which are substantial and material, or which bring government into disrepute.

(f) The code of ethics for members of the Legislature shall conform to subsection e. hereof as nearly as may be possible.

**13. Solicitation, receipt or agreement to receive, thing of value for service related to official duties; exceptions.**

(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, 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 or by regulations promulgated by the State Ethics Commission.

(b) A State officer or employee or special State officer or employee of a State agency in the Legislative Branch 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;

(2) 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;

(3) reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500 per trip limitation shall not

apply if the reimbursement or payment is made by: (a) a nonprofit organization of which the officer, employee, or member 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 or the Legislature in the case of a member of the Legislature; or (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services.

Members of the Legislature shall obtain the approval of the presiding officer of the member's House before accepting any reimbursement or payment of expenditures for travel or subsistence outside New Jersey.

As used in this subsection, "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; and "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.

(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.

(d)(1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree 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 or 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 travel as authorized by regulations promulgated by the State Ethics Commission. To receive such income, a designated State officer shall first seek review and approval by the State Ethics Commission to ensure that the receipt of such income does not violate the New Jersey Conflicts of Interest Law, L. \_\_\_\_\_, c. \_\_\_\_\_ (N.J.S.A. \_\_\_\_\_),

or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: 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, 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 listed in this subsection.

(e) A violation of this section shall not constitute a crime or offense under the laws of this State.

**13.1. Prohibition on accepting compensation, rewards, gifts, honorariums; exceptions.**

(a) Except as expressly authorized in section 13 of L. 1971, c. 182 (N.J.S.A. 52:13D-24) or when the lobbyist or legislative agent is a member of the immediate family of the member of the Legislature or legislative staff, no member of the Legislature or legislative staff may accept, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value from each lobbyist or governmental affairs agent, as defined in the Legislative Activities Disclosure Act of 1971, L. 1971, c. 183 (N.J.S.A. 52:13C-18 to -36), totaling more than \$250 in a calendar year. The \$250 limit on acceptance of compensation, reward, gift, honorarium or other thing of value shall also apply to each member of the immediate family of a member of the Legislature, as defined in section 2 of L. 1971, c. 182 (N.J.S.A. 52:13D-13) to be a spouse, child, parent, or sibling of the member residing in the same household as the member of the Legislature.

(b) The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if received in the course of employment, by an employer other than the State, of an

individual covered in subsection a. of this section or a member of the immediate family. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if acceptance is from a member of the immediate family when the family member received such in the course of his or her employment.

(c) Subsection a. of this section shall not apply if a member of the Legislature or legislative staff who accepted any compensation, reward, gift, honorarium or other thing of value provided by a lobbyist or governmental affairs agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or governmental affairs agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

(d) A violation of this section shall not constitute a crime or offense under the laws of this State.

**14. Disclosure or use for personal gain of information not available to public.**

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.

**15. Inducing or attempting to induce legislative member or State officer or employee to violate act; penalty.**

No person shall induce or attempt to induce any State officer or employee, special State officer or employee, or member of the Legislature to violate any provision of this Act or any code of ethics promulgated thereunder. Any person who willfully violates any provision of this section is a disorderly person, and shall be subject to a fine not to exceed \$500 or imprisonment not to exceed 6 months, or both.

**16. Program on legislative ethics.**

The Legislature shall provide a program on legislative ethics for its members and State officers or employees and special State officers or employees in the Legislative Branch of government no later than April 1 of every even-numbered year.

**17. Nepotism.**

(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 designated State officer, 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.

(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) No State officer or employee or special State officer or employee of the Executive Branch shall supervise or exercise any authority with regard to personnel actions with respect to any relative, cohabitant or person with whom the officer or employee has a dating relationship.

(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.

(e) As used in this section, and solely for the purpose of evaluating claims of nepotism, "spouse" shall include persons

with whom the individual has an intimate and steady personal relationship.

**18. Financial Disclosure.**

Financial disclosure requirements should be codified for continuity as well as notice to incoming officials.

**EXHIBIT B**

**PROPOSED PLAIN LANGUAGE GUIDE**

## PLAIN LANGUAGE GUIDE\*

### **An Ethics Handbook in Plain Language for Employees In the Executive Branch of New Jersey State Government and in the Employment or Service of State Agencies**

*“Always do right. This will gratify some people and astonish the rest.”*

Mark Twain (Samuel Longhorne Clemens) 1835-1910  
(Courtesy of the Ethics Handbook for Federal Officials)

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Most State employees are honest, loyal, and hardworking men and women, eager to meet the high standards the public expects of its public servants. Understandably, these men and women may ask why they need to read this handbook. The answer is that although many of the standards of conduct are highly intuitive, some are not. The rules in this handbook derive from detailed statutes, regulations, and executive orders. There are, however, ten simple principles that will guide you through the details. If you follow these principles you will not have concern.

#### THE TEN PRINCIPLES OF ETHICAL CONDUCT

- **Exploitation of Official Position**

You may not use your position to secure a job, contract, or governmental approval for a friend or family member.

- **Compensation for Official Duties**

Your paycheck is your only permitted compensation. You may not accept any other compensation for performing your job. You may not “moonlight” without the approval of your superior.

- **Gifts and Favors**

You may not accept any gift of more than nominal value (e.g., a tee-shirt or a pen) from anyone with whom your agency conducts business.

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\* This Guide reflects current Conflicts Law. It does not reflect the recommendations contained within the Final Report of the Special Ethics Counsel. This Guide should be supplemented appropriately to reflect subsequent legislative changes to codify any or all of the Final Report’s proposals.

- **Attendance at Events: Honoraria, Activities, and Expenses**

You may not be “wined and dined” by people with whom your agency conducts business. You may not accept honoraria or official travel reimbursements without prior approval from your agency or the Ethics Commission. If a donor conducts business with your agency, it is unlikely that you may accept such payments.

- **Political Activity**

You may not become involved in political activities without clearance from your supervisor.

- **Conflicts of Interest**

You may not act in any matter in which you, your family, or your close friends have a financial interest that might tend to conflict with the proper discharge of your official duties. Rather, you should recuse yourself and ask someone else to perform the State task.

- **Prohibition on Use of Confidential Information**

You may not accept employment or engage in any activity that may require or induce you to disclose confidential information acquired through your position.

- **Nepotism**

You may not hire, promote, or supervise a relative.

- **Post-Employment Lifetime Restrictions**

After you leave public employment, you may not represent or assist a person concerning a particular matter if you were substantially and directly involved in that particular matter while in State employ. Further, you may not use or disclose any information not generally available to members of the public, gained during the course of your employment.

- **When in Doubt, Ask!**

If you think you have a conflict of interest or are unsure of any of these rules, ask your Ethics Liaison Officer or the Commission. If you suspect any wrongdoing, report your suspicion. Complaints may be made anonymously to the Commission and are kept confidential.

## INTRODUCTION

This is a Guide for State officers and employees and special State officers and employees in the Executive Branch of New Jersey State Government. If you are one of these persons, you should read this Guide carefully. It explains the ethics rules and laws found in the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.) and in N.J.A.C. 19:61-1.1 et seq., to which you are subject and which can be found at the end of this Guide. In addition to those laws and rules, you are also bound by the unique ethics code adopted by the agency for which you work. **You are responsible for knowing the laws and rules described in this guide, as well as the specific policies and procedures of your particular agency.**

As we in State government do our work, it is important that the public have the highest degree of confidence in our conduct. Our fellow employees depend on us to make lawful, ethical decisions. This Guide deals with ethics laws that are the minimum standards, and we need to live up to them. But our goal should be to do more than is required, more than just not acting illegally. Our goal should be the highest ethical standards of public service.

This Guide provides general information only and does not have the force and effect of law. It does not replace any actual laws or rules, and it does not address every ethical restriction contained in the laws and rules it summarizes. It does not cover the requirements contained in your agency's ethics code, to which you are also subject. Ethical issues may also be addressed in procurement, personnel, and travel rules, as well as in open meetings, open records, and criminal laws. The statutes creating your agency may also contain ethical prohibitions. In addition, members of particular professions (such as lawyers and accountants) are subject to their own codes of professional responsibility.

If you have questions (and most of us do, from time to time), you should contact your supervisor, Department Head or Ethics Liaison Officer ("ELO"). Most of the reporting requirements discussed in this Guide refer you to your agency's ELO. A list of ELOs is available at [www.nj.gov/lps/ethics/elolist.htm](http://www.nj.gov/lps/ethics/elolist.htm). You may also address questions directly to the Executive Commission on Ethical Standards (which we refer to in this Guide as the "Commission"). We urge you to ask before you do something, rather than need to try to explain what you did.

To obtain more information or to check for revisions to these rules, call the Commission at (609) 292-1892. You may also visit our web site at [www.nj.gov/lps/ethics](http://www.nj.gov/lps/ethics).



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## **GENERAL STANDARDS OF CONDUCT**

These rules promote the principle that public office is a public trust. Where government is based upon the consent of its citizens, the public is entitled to have complete confidence in the integrity of government. The business of New Jersey is conducted in a manner intended to assure the citizens of our State that the character and conduct of its officials and employees are above reproach.

To achieve this result, the State has ethics rules that are general in nature, as well as rules that deal with very specific situations. Under the general rules, you must not:

- 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 your duties in the public interest;
- use or attempt to use your official position to secure privileges or advantages for yourself or others;
- act in your official capacity in any matter in which you have a direct or indirect personal financial interest that might reasonably be expected to impair your objectivity or independence of judgment; or
- knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of your acts that you may be engaged in conduct violative of your trust as an officer or employee of the State.

These rules apply if you are a State officer or employee (holding office or employment in a State agency or a full-time New Jersey member of an interstate agency) or a special State officer or employee (holding office or employment in a State agency for which you receive no compensation, except possibly reimbursement of expenses, a part-time employee or a New Jersey member of an interstate agency if your duties are not full-time).

## **GIFTS, FAVORS, SERVICES AND OTHER THINGS OF VALUE**

You are not allowed to accept any gift, favor, service, or other thing of value from any person or entity under circumstances from which it might be reasonably inferred that the thing was given or offered in order to influence you in the discharge of your official duties.

Some things of value are obvious, such as money, stock, debt forgiveness, real estate, or automobiles. But less obvious things also have value, including offers of employment, loans, labor, rebates, price discounts, entertainment, and meals.

- ***When an Interested Party is Involved***

Regardless of the circumstances, you are always prohibited from soliciting or accepting any thing of

value from an interested party. An “*interested party*” is:

- a person or entity that is or may reasonably be anticipated to be subject to the regulatory, licensing, or supervisory authority of your agency, or any employee, representative or agent of that person or entity;
- a supplier to your agency (meaning any private sector person or entity that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to your agency) or any employee, representative, or agent of a supplier;
- an organization that advocates or represents the positions of its members to your agency; or
- an organization a majority of whose members are interested parties.

In general, an interested party is any person or entity that you or your agency deal with, contact, or regulate in the course of official business.

- **Example:** An employee inspects a business for health and safety violations. She may not accept a \$20 gift certificate from the business.
- **Note:** A separate set of rules applies to attending events sponsored by interested parties. See “*Attendance at Events: Honoraria, Activities, and Expenses,*” below.

- ***Reporting Requirement***

You are required to disclose and hand over to your ELO any offer or receipt of a thing of value from any person or entity.

- ***Determination by Your ELO***

If your ELO determines that it is inappropriate under the applicable ethics rules for you to accept the thing of value, he or she will return it to the donor or, if it is perishable, give it to a nonprofit entity in the name of the donor. Your ELO will also determine whether a lobbyist or governmental affairs agent offered the thing of value. If so, your ELO will let you know whether accepting it will exceed the calendar year limit of \$250.

- ***Unsolicited Gifts of Nominal Value***

From time to time, all of us receive unsolicited gifts or benefits of trivial or nominal value, such as complimentary articles offered to the general public (e.g., key chains, pencils, and calendars), and gifts received as a result of mass advertising mailings to the general business public. However inconsequential, you must disclose your receipt of these items to your ELO. If he or she determines that it will not create an impression of a conflict of interest or a violation of the public trust, you or your agency will be permitted to retain and use the items.

- ***Caution Against Inappropriate Uses***

An item that is otherwise permissible to accept might be impermissible if it is used or displayed in an inappropriate manner. For instance, an official in a regulatory agency should not use a pocket calendar conspicuously marked with the name of a company that is regulated by the agency, as this might create the impression of favoritism. A State agency should not display in any of its offices a wall calendar from a vendor, as this might create the impression of an endorsement.

- ***Other Resources***

For a more complete discussion of this subject, see “*Guidelines Governing Receipt of Gifts and Favors by State Officers and Employees*,” [www.nj.gov/lps/ethics/giftcode.htm](http://www.nj.gov/lps/ethics/giftcode.htm), and N.J.A.C. 19:61-6.9 to -6.10, [www.nj.gov/lps/ethics/ecesrules.pdf](http://www.nj.gov/lps/ethics/ecesrules.pdf). You should also see “*Advisory Opinions*” on page 19 for information on advisory opinions that the Commission has issued on this topic and how to request an advisory opinion concerning your particular circumstances.

## **COMPENSATION FOR OFFICIAL DUTIES**

- ***Your State Paycheck is Your Only Permitted Compensation***

The only compensation or other thing of value that you are allowed to solicit or accept for doing your State duties is your State paycheck. Payment or reimbursement of your expenses for attending events is not compensation, and is addressed below under the heading “*Attendance at Events: Honoraria, Activities, and Expenses*.”

- ***Other Resources***

For a more complete discussion of this subject, see the Commission’s guidelines on various topics, at [www.gov/lps/ethics/general.htm](http://www.gov/lps/ethics/general.htm). You should also see “*Advisory Opinions*” on page 19 for information on advisory opinions that the Commission has issued on this topic and how to request an advisory opinion concerning your particular circumstances.

## ATTENDANCE AT EVENTS: HONORARIA, ACTIVITIES, AND EXPENSES

An “*event*” is any 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 your work location, is sponsored or co-sponsored by a non-State government source and the invitation for which is extended to you because of your official position.

Meetings that you attend at other State agencies in the course of your official duties are not “events.”

- You must obtain prior approval from your ELO to attend any event.
- You are not allowed to accept an honorarium or fee for a speech or presentation at an event.
- You are not allowed to use your official title for the purpose of fundraising for a private organization (whether at an event or elsewhere).
- Regardless of the sponsor or the purpose of the event, you are permitted to accept nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).
- *If the Event is Not Sponsored by an Interested Party* (see page 3 for definition)

The State may pay your reasonable expenses associated with attending the event or it may permit you to accept (but not from an interested party) travel, meals, accommodation, waiver of conference or event fees or any other costs associated with attending the event, or reimbursement for such costs.

You are prohibited from accepting entertainment that is collateral to the event, such as a golf outing, or meals taken other than in a group setting with all attendees, or reimbursement for such items.

- **Examples:** An employee of Travel and Tourism at the Department of Commerce 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 a dinner on the final day of the meetings and has been offered a \$500 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.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant from 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 the use of his official title for fundraising purposes.

- ***If the Event is Sponsored by an Interested Party***

The State must pay your reasonable expenses associated with attending the event, and neither you nor the State can receive travel, meals, accommodation, waiver of conference or event fees or any other costs associated with attending the event, or reimbursement for such costs, from any source. There may be an exception to this rule if you take an active role in the event (see below).

- ***If You Take an Active Role in the Event***

If an event is designed to provide training, dissemination of information, or the exchange of ideas, and you will be making a speech, participating in a panel at the event, or acting as an accompanying resource person for the speaker and/or participant, you must seek approval from your ELO. If he or she determines that doing so will not create a conflict or the appearance of one, your ELO can permit you to attend the event and permit the interested party sponsor to reimburse or pay for the following expenses associated with attending the event, if those expenses are not paid for by the State:

- “***Allowable Entertainment Expenses***” — 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 not 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.
- “***Actual and Reasonable Expenditures for Travel or Subsistence***” — include commercial travel rates directly to and from the event and food and lodging expenses which are moderate and neither elaborate nor excessive. For an event outside New Jersey, this amount must not exceed \$500 per trip, for expenditures for travel or subsistence and entertainment expenses that are not paid for by the State of New Jersey. The \$500 per trip limitation does not apply if the reimbursement or payment is made by a nonprofit organization if:
  - you are an active member of the organization because the State pays a membership fee or charge; or
  - the organization does not contract with any State agency to provide goods, materials, equipment, or services.
- **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 conference fee; the conference program includes morning and afternoon refreshments and lunch. If the ELO 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 ELO's approval must be forwarded to the Commission.

The Division of Motor Vehicles is considering the purchase of new pollution-testing equipment. One of the companies that plans to submit a bid invites several Division 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 Division, 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 considered "events" for the purposes of this Guide.

- ***Considerations in Granting Approval***

Your ELO must determine whether a legitimate State purpose will be served by your attendance at an event, and must consider applicable laws, regulations, ethics codes, guidelines, departmental administrative policies, and any other relevant considerations. These might include the identity of the sponsor and the other participants, the purpose of the event, whether the event will assist you in carrying out your official duties and support your agency's mission, and the value and character of the costs, benefits, and/or honoraria provided by the sponsor (including whether they are comparable to those offered to or purchased by other attendees). In some instances, the ELO is required to forward the approval to the Commission for review.

- ***Special Rules Applicable to Designated State Officers***

The Governor, the Attorney General, Commissioners of State agencies, heads of the other Executive Branch departments, specified members of the Governor's staff, and certain other persons are identified in N.J.S.A. 52:13D-24 as "***designated State officers***." These persons are subject to stricter rules concerning compensation, honoraria, and other forms of income from any source other than their State paycheck. Designated State officers are required, in certain instances, and are urged in all others, to seek prior review and approval from the Commission before soliciting or accepting payment or reimbursement of their expenses in connection with an event from any outside source.

- ***Other Resources***

For a more complete discussion of this subject, see N.J.A.C. 19:61-6.1 to -6.8, at

[www.nj.gov/lps/ethics/ecesrules.pdf](http://www.nj.gov/lps/ethics/ecesrules.pdf). You should also see “*Advisory Opinions*,” below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

## **POLITICAL ACTIVITY**

You are permitted to be involved in partisan political activities, provided there is no provision in your departmental code of ethics prohibiting those activities. The Ethics Codes of the Election Law Enforcement Commission, the Executive Commission on Ethical Standards, and several other agencies have specific provisions prohibiting such activities. Under no circumstances may you use State time or State resources in pursuit of political activities. As with other outside activities, you must obtain the prior approval of your ELO.

The restrictions on your soliciting or accepting things of value do not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office. However, you cannot accept a campaign contribution if you know it is being given in lieu of a payment that you would otherwise be prohibited from accepting.

- ***Federal Hatch Act***

The Hatch Act restricts the political activity of an individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants. There is a misperception that the Hatch Act only applies if one’s salary is federally funded. The Act may apply more broadly than that.

***Covered State and Local Employees May:***

- run for public office in nonpartisan elections;
- actively campaign for candidates for public office in partisan and nonpartisan elections; and
- contribute money to political organizations and attend political fundraising functions.

***Covered State and Local Employees May Not:***

- be a candidate for public office in a partisan election (this does not eliminate being a candidate for school board, a nonpartisan office in New Jersey);
- use official authority or influence to interfere with or affect the results of an election or nomination; or
- directly or indirectly coerce contributions from subordinates in support of a political party or candidate.



The Hatch Act is a federal statute, not under the jurisdiction of the Commission. Any interested party may request advisory opinions from the Office of Special Counsel, Hatch Act Unit, 1730 M Street, N.W., Suite 300, Washington, D.C. 20036-4505. Telephone: 800-85-HATCH (800-854-2824) or 202-653-7143. You may also visit the website of the United States Office of Special Counsel, at [www.osc.gov](http://www.osc.gov).

- ***Other Resources***

For a more complete discussion of this subject, see “State Employees’ Participation in Political Activities,” [www.nj.gov/lps/ethics/polcode.htm](http://www.nj.gov/lps/ethics/polcode.htm). See “*Advisory Opinions*,” below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

## **OUTSIDE EMPLOYMENT**

You may have a second job, outside volunteer activity, or personal business interest only if it is compatible with your agency rules and your State responsibilities. You must not:

- undertake any employment or service which might reasonably be expected to impair your objectivity and independence of judgment in the exercise of your official duties;
- engage in any business, profession, trade, or occupation that is subject to licensing or regulation by a specific agency of State Government, without promptly filing notice of that activity with the Commission;
- engage in any business, transaction, or professional activity that is in substantial conflict with the proper discharge of your duties in the public interest; or
- use state time, personnel, or other resources for the other job or activity.

Neither you nor your immediate family members can 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. To ask for a waiver, contact the Commission.

Prior to engaging in any outside employment or other activity, you must get approval from your agency. Ask your ELO.

If you are not certain whether you are permitted to take on a job or other outside activity according to these rules, you should ask the Commission for an advisory opinion. These cases are frequently very fact-sensitive, and the Commission decides each individually.

- ***Other Resources***

For a more complete discussion of this subject, see “*Guidelines Governing Outside Activities*,” at

[www.nj.gov/lps/ethics/2arycode.htm](http://www.nj.gov/lps/ethics/2arycode.htm). See also, “*Outside Activity Questionnaire*,” at [www.nj.gov/lps/ethics/outsideact.htm](http://www.nj.gov/lps/ethics/outsideact.htm). See “*Advisory Opinions*,” below, for information on how to find advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

## **CONFLICTS OF INTEREST**

As a State officer or employee or special State officer or employee, you are prohibited from acting in your official capacity in any matter in which you have a direct or indirect personal financial interest that might be expected to impair your objectivity or independence of judgment. As a practical matter, this means that you should not participate in any decision, even informally, on a matter in which you have a financial interest.

### ***You Could Have a Financial Interest through Such Things as:***

- A purchase, sale, lease, contract, option, or other transaction;
- Property or services; and
- Employment or negotiations for prospective employment.

The Conflicts Law contains an exception that permits you to represent yourself in negotiations or proceedings concerning your own interest in real property.

### **• *Prohibitions on Contracts with a State Agency***

#### ***Special State Officers and Employees***

You may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with the State agency with which you are affiliated if you have any duties or responsibilities in connection with the purchase or acquisition of property or services. This prohibition also applies to your partners and to any corporation that you control, or in which you own or control more than 1% of the stock. The prohibition does not extend to other State agencies.

#### ***State Officers and Employees***

You, along with your partners or any corporation you control or in which you own or control more than 1% of the stock, may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with any State agency, *whether or not* it is the agency for which you work.

#### ***Limited Exceptions to these Prohibitions***

Three categories of contracts are exempt from the general prohibition on contracting with the

State. However, before entering into a contract falling within any of these categories, approval must first be obtained from the Commission. The three categories are:

- Those purchases, contracts, agreements, or sales that are made after public notice and competitive bidding. The Commission typically approves such contracts unless the contract in question is with the State employee's own agency. In these situations, the Commission has determined that such contracts raise the issue of an appearance of impropriety under section 23(e)(7) of the Conflicts Law.
- Those contracts that may be awarded without public advertising and competitive bidding pursuant to N.J.S.A. 52:34-10.
- Any contract of insurance entered into by the Director of the Division of Purchase and Property, Department of Treasury, pursuant to N.J.S.A. 52: 27B-62.

In addition, there are two statutory exemptions that do not require advance approval by the Commission:

- Contracts for the development of scientific or technological discoveries or innovations: Section 19.1 of the Conflicts Law excepts contracts 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 authorizing these contracts that minimizes actual conflicts of interest, and the contract complies with the code procedure.
- Certain rental agreements with State agencies: Section 19.2 of the Conflicts Law excepts rental agreements with a State agency that operates a facility which rents space or provides services to assist small businesses employing fifty people or less, pursuant to the same terms and conditions as those offered to members of the public generally.

- ***Prohibitions on Representing Parties other than the State***

There are severe restrictions on your ability (and that of any partnership, corporation, or firm in which you have an interest) to represent, appear for, or negotiate on behalf of a person other than the State in connection with any cause, proceeding, application, or other matter, including a negotiation concerning the acquisition or sale of property of any sort, pending before any State agency. See N.J.S.A. 52:13D-15 to -16.

Representation does not only involve personally appearing before a State agency on behalf of an individual or entity. Under Commission precedent, representational activities also include:

- correspondence to a State agency on behalf of a third party;
- telephone calls to a State agency on behalf of a third party; and

- a State employee’s signature on an application or other document submitted to a State agency on behalf of a third party (e.g., an engineering report).

You should carefully review these restrictions or consult with your ELO if you are considering taking any action on behalf of another person or entity that might be considered representing, appearing for, or negotiating on behalf of that person or entity in opposition to the State or before a State agency.

For special State officers or employees, the restriction on representing parties other than the State is limited to their own agencies.

- ***Advisory Opinions***

If you think that you may have a conflict of interest, you should ask your ELO or the Commission for an opinion. These cases are frequently very fact-sensitive, and the Commission decides each individually. See “*Advisory Opinions*,” below, for information on how to find advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

## **RULES REGARDING PUBLISHED WORKS**

The Commission staff frequently receives inquiries concerning State employees’ activities in connection with authoring and publishing research papers, articles, and books. Based on applicable rules and Commission precedent, you may accept compensation for published works only if you meet all of these conditions:

- There is no prohibition governing that activity in your department’s enabling legislation or code of ethics;
- You obtain prior approval from your ELO;
- The published work does not use or disclose information that is not generally available to the public;
- You do not use State time or resources in connection with the published work;
- You do not use your official title in connection with publication or promotion of the published work;
- You indicate that your views do not represent those of the State;
- You do not promote, advertise, or solicit sales of the published work to co-workers or individuals or entities with whom you have official dealings;

- You do not contract to sell the published work to the State, except in compliance with section 19 of the Conflicts Law; and
- The published work is not prepared as part of your official duties.

Note that the term “***published work***” includes not only research papers, articles, and books, but also any tangible mediums of expression, such as literary, pictorial, graphic and sculptural matter, sound recordings, and software.

- **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 part of, his official duties, so long as he prepares the article at home, on his own time, without using any State resources.

- ***Other Resources***

For a more complete discussion of this subject, see “*Guidelines Governing Outside Activities*,” at [www.nj.gov/lps/ethics/2arycode.htm](http://www.nj.gov/lps/ethics/2arycode.htm), “*Guidelines Governing Published Works*,” at [www.nj.gov/lps/ethics/pubworks.htm](http://www.nj.gov/lps/ethics/pubworks.htm), and N.J.A.C. 19:61-6.7, at [www.nj.gov/lps/ethics/ecesrules.pdf](http://www.nj.gov/lps/ethics/ecesrules.pdf). See “*Advisory Opinions*,” below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

## **CONFIDENTIAL INFORMATION**

You may not divulge any information that you obtain in the course of your official duties that is not generally available to members of the public. You may not use any such confidential information for your own benefit, whether direct or indirect. These restrictions continue even after you are no longer a State employee.

## **USE OF OFFICIAL STATIONERY**

Agency stationery can only be used for agency purposes. Use of official stationery for personal purposes will result in disciplinary action by the agency or administrative action by the Commission. See “*Guidelines Governing the Use of Official Stationery*,” at [www.nj.gov/lps/ethics/gdstcode.pdf](http://www.nj.gov/lps/ethics/gdstcode.pdf).

## **POST-EMPLOYMENT RESTRICTIONS**

- ***Seeking Future Employment***

If you have direct and substantial contact with any consultants or vendors doing business with the State, you must refrain from circulating resumes or in any manner seeking employment with those firms while you are still in State service. If you are solicited for potential employment by a firm with which you have direct and substantial contact, that solicitation must be disclosed immediately to your management and to your ELO to avoid a situation where you may appear to be using your official position to gain an unwarranted advantage. If you do not have direct and substantial contact with a particular consultant or vendor doing business with the State, you may circulate your resume and enter into discussions concerning potential employment with that firm, so long as you avoid any situation that may give rise to an unwarranted advantage. Your discussions, interviews, and negotiations should not take place on State time.

If the agency in which you are employed regulates non-State entities, solicitation or discussion of employment with those regulated entities (or their representatives) which have a specific cause, proceeding, application, or other matter before your agency is not permitted. If the entity does not have a specific cause, proceeding, application, or other matter before your agency, the situation must be reviewed by your ELO or the Commission on a case-by-case basis, and you can not proceed with any job-seeking activities related to that entity unless you obtain prior approval.

- ***Dealing with the State after your Departure***

As a former employee, you will be prohibited from representing or assisting a person concerning a particular matter if you were substantially and directly involved in that particular matter while in State employment. This prohibition does not extend to “determinations of general applicability or to the preparation or review of legislation that is no longer pending before the Legislature or the Governor.” In addition you may be banned from assisting or representing persons in any matter that is pending before your former agency. The statute, rules, and precedent governing these prohibitions are complex. Questions about the nature of matters with which you had involvement during the course of your official duties should be directed to the Commission, for determination on a case-by-case basis.

- ***Special Rules for the Casino Industry and for Lawyers***

Additional, and more stringent, rules will apply to your post-employment activities if you file a

Financial Disclosure Statement pursuant to law or executive order, or have responsibility for matters affecting casino activity, or are engaged in the practice of law. Questions concerning post-employment casino-related activities should be directed to the Commission. Lawyers may request advice on the application of the Rules of Professional Conduct from the Supreme Court Advisory Committee on Professional Ethics.

- ***Contracting with your Former Agency***

Nothing in the Ethics Laws prevents an agency from contracting directly with a former employee.

- ***Other Resources***

For a more complete discussion of this subject, see “*Post-Employment Restrictions for State Employees*,” at [www.nj.gov/lps/ethics/pemcode.htm](http://www.nj.gov/lps/ethics/pemcode.htm). See “*Advisory Opinions*,” below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

## **NEPOTISM**

The Commission staff frequently receives inquiries concerning the propriety of State officials interacting in the course of their official duties with family members. The majority of inquiries concern relatives employed by the same State agency, or interactions with family members employed in the private sector. The Conflicts Law now specifically addresses nepotism (it previously covered certain casino-related provisions, discussed at the end of this section). The Commission has dealt with the nepotism issue over the years by applying other relevant statutory provisions.

- ***Family Members Working for the Same Agency***

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 therefore should not directly supervise or take personnel actions in regard to the spouse.

In the case of other family members working for the same State agency, each case is 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 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.

- ***Hiring Family Members***

With respect to the hiring of family members, the Commission looks at the totality of circumstances surrounding the hire to determine whether any unwarranted privilege has been afforded the family member.

- ***Interacting with Family Members in the Private Sector***

With respect 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.

- ***Dating and Other Relationships***

The Commission's policy concerning spouses who work in the same agency 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 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.

- ***Casino-Related Conflict Issues***

Only the casino-related provisions of the Conflicts Law contain prohibitions that specifically apply to a State official's immediate family members (defined as the person's spouse, child, parent, or sibling residing in the same household). Waivers of these prohibitions may be requested by contacting the Commission. Waivers will be granted if, in the Commission's judgment, the 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.

- ***Other Resources***

For a more complete discussion of this subject, see "*Official Interactions with Family Members/Cohabitants and Dating Relationships*," at [www.nj.gov/lps/ethics/famcode.htm](http://www.nj.gov/lps/ethics/famcode.htm). See "*Advisory Opinions*," below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

## **RECUSAL**

Sometimes, conflicts situations occur because of your personal relationships or financial circumstances. For example, you may be involved in reviewing vendor qualifications for a contract your agency is preparing to issue, and discover that your sibling's company has submitted a proposal. To avoid that inherent conflict of interest, you must formally recuse yourself from the review by assigning another individual to handle the matter (or advising your supervisor of the need to do so), and by ensuring that you are screened from any communications about the review. See the Commission's rule on recusal, at [www.nj.gov/lps/ethics/ecesrules.pdf](http://www.nj.gov/lps/ethics/ecesrules.pdf), for more information about when and how to recuse yourself.

## **THE COMMISSION**



The Commission is responsible for providing advice and investigating matters pertaining to ethics and related rules governing the official conduct of State officers and employees and special State officers and employees. You are encouraged to seek guidance from the Commission or your ELO whenever you have questions about what you should do.

## **COMPLAINTS AND INVESTIGATIONS**

Allegations come to the Commission from various sources and can be made orally or in writing. The complainant may remain anonymous. If the complainant does identify him/herself, that information remains confidential.

Allegations may also be filed with the State agency employing the State officer or employee, in accordance with the procedures established by the agency. Upon receipt of an allegation, the State agency is required to file a copy with the Commission. It is within the discretion of the Commission to direct the State agency to transfer the matter to it.

When the Commission receives an allegation, the staff first reviews it for an initial determination as to whether the alleged conduct falls within the jurisdiction of the Commission. Once it has been determined that the Commission has jurisdiction, the staff initiates a preliminary investigation which may include interviews of the complainant, the State officer or employee involved, and any other individuals who possess knowledge of the circumstances surrounding the alleged conduct. Interviews are conducted under oath and are tape-recorded. An attorney or a union representative may accompany the interviewee, if he/she so desires, but such representation is not required. A copy of the taped interview will be provided to the interviewee upon his/her request, after the Commission has reviewed the matter. Interviews are occasionally conducted via telephone. Investigations also frequently involve the review of documents.

If the Commission determines that the testimony of any person is required, and that person refuses to appear, a subpoena may be issued.

During the course of a preliminary investigation, no information concerning an allegation is made public. Upon the conclusion of the preliminary investigation, a written report is presented to the entire Commission. The Commission's meeting is not a formal hearing. No witnesses appear. A full due-process hearing is held at the Office of Administrative Law ("OAL"), if and when the Commission determines that indications of a violation exist. The Commission meeting dates are posted on the Commission's website, at [www.nj.gov/lps/ethics](http://www.nj.gov/lps/ethics). Its meetings are open to the public. Reports of the Commission's preliminary investigations are privileged communications between the staff and Commission members, and are considered in closed session.

If the Commission finds that there has been no violation of the Conflicts Law or the relevant department's code of ethics, as alleged, it will dismiss the allegation. This occurs in an open public session. If the Commission determines that there are indications of a violation warranting further proceedings, a complaint is issued for a hearing at the OAL, pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure

Rules, N.J.A.C. 1:1. Although the Commission is also authorized hold hearings, that is not normally done, due to time constraints. Prior to an OAL hearing, witnesses may be interviewed by the investigative staff. After the OAL hearing is concluded, a decision is issued in accordance with the time frame set forth in the Administrative Procedure Act.

In the past, the Commission has permitted individuals to enter into consent agreements with the Commission, either prior to or after the issuance of a complaint. Consent orders are included in the individual's personnel file. Consent orders and complaints are public records.

- ***Other Resources***

For a more complete discussion of this subject, see "*Investigative Process*," at [www.nj.gov/lps/ethics/process.htm](http://www.nj.gov/lps/ethics/process.htm). See "*Advisory Opinions*," below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

## **PENALTIES**

When a person is found to have violated the Conflicts Law or a particular agency's code of ethics, the Commission can levy fines ranging from \$500 to \$10,000. The Commission is also authorized to order that the violator be suspended or dismissed from office or employment. If the person willfully and continuously disregarded the provisions of the Conflicts Law or a particular agency's code of ethics, the Commission may order that the person be barred from holding any public office or employment in this State, in any capacity whatsoever, for a period of up to five years.

## **ADVISORY OPINIONS**

Most of us working for the public will, at some point, find ourselves facing an ethics dilemma. It might concern whether we can accept a favor or gift from an agency contractor or vendor. Perhaps it will arise in connection with a second job or volunteer work. Maybe a spouse's business will want to do business with your agency.

One of the primary functions of the Commission is to respond to questions from State employees and others concerning how a particular situation might be analyzed under State ethics rules — and to offer advice.

This can happen in a number of ways, ranging from very informal advice, to official written opinions. In many cases, questions can be answered with a telephone call or a visit with Commission staff. In other cases, employees might want to get a written opinion from the staff that is "unofficial," but documents the advice sought and received.

An "official" advisory opinion is one that is presented to the full Commission at a public meeting. Such an opinion is given in situations that are less clear, or for which there is little precedent. If you receive formal advice and guidance from the Commission, you will be immune from charges of

violations of the provisions of the Conflict Law. You cannot gain immunity from the provisions of the Code of Criminal Justice, governing crimes such as bribery.

- ***If You Want to Request an Advisory Opinion Concerning Your Situation***

To obtain an official advisory opinion from the Commission, you should write to the Executive Director of the Commission. You should provide as much information as possible concerning the request, and include any relevant documentation. In the event that additional information is required, a Commission investigator will contact the appropriate individuals or organizations. Requests for advisory opinions and replies to requests for advisory opinions may be made available to the public, after consideration by the Commission at a public meeting. For further information, see “*Requests for Advice*,” at [www.nj.gov/lps/ethics/advisory.htm](http://www.nj.gov/lps/ethics/advisory.htm).

If you are unsure which level of response is most appropriate in your situation, give the Commission a call at (609) 292-1892. The most important thing is that you seek advice, before engaging in a potentially questionable activity.

- ***If You Want to Review Existing Advisory Opinions***

To review official advisory opinions issued in the past by the Commission, contact the Commission's staff at (609) 292-1892, or visit the Commission offices between 9:00 a.m. and 4:00 p.m. on business days. While a review of prior opinions may be useful, bear in mind that every situation is unique, and that responses to one person may not necessarily apply to another, due to subtle factual differences between situations or to subsequent changes in the applicable laws or rules. Also, bear in mind that advisory opinions are only binding with respect to the facts and circumstances reviewed and considered in the specific request. Summaries of many of the Commission's opinions are available in the Commission's newsletters, at [www.nj.gov/lps/ethics/newsltrs.htm](http://www.nj.gov/lps/ethics/newsltrs.htm).

## **FINANCIAL DISCLOSURE**

Some State officers and employees and special State officers and employees are required by statute, executive order, or other law to file annual financial disclosure statements with the Commission. Information about financial disclosure requirements, forms, and instructions are available on the Commission's webpage, at [www.nj.gov/lps/ethics](http://www.nj.gov/lps/ethics).

State officers and employees who must file financial disclosures, and their immediate family members and new employers, are subject to a two-year casino-related post-employment restriction. See N.J.S.A. 52:13D-17.2(c). This restriction does not apply to most of the special State officers and employees who file financial disclosures.

## INFORMATION ON RELATED OFFICES

- ***Legislative Ethics***

Joint Legislative Committee on Ethical Standards  
Office of Legislative Services  
P.O. Box 068  
Trenton, NJ 08625-0068  
Phone: (609) 292-4840  
Toll Free: (800) 792-8630  
TDD: (609) 777-2744  
Toll Free: (800) 257-7490  
Fax: (609) 777-2440

- ***Local Government Ethics***

Local Finance Board  
Department of Community Affairs  
P.O. Box 803  
Trenton, NJ 08625-0803  
Phone: (609) 292-6613  
Fax: (609) 292-9073

- ***School Ethics***

School Ethics Commission  
P.O. Box 500  
Trenton, NJ 08625-0500  
Phone: (609) 984-6941

- ***Lobbyist Registration and Disclosure***

Election Law Enforcement Commission  
P.O. Box 185  
Trenton, NJ 08625-0185  
Phone: (609) 292-8700  
Fax: (609) 633-9854

**EXHIBIT C**

**PROPOSED BUSINESS ETHICS GUIDE**

# **BUSINESS ETHICS GUIDE**

## **A Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey, its Institutions, and Agencies<sup>1</sup>**

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### **INTRODUCTION AND GUIDING PRINCIPLES**

This Plain Language Guide to Ethical Business Conduct (“Guide”) covers a wide range of business practices and procedures. It does not cover every issue that may arise, but it does set out basic principles to guide all employees, officers, and directors of companies transacting business with the State of New Jersey. Obeying the law, both in letter and spirit, is the foundation on which a company’s ethical standards are built. All company employees, officers, and directors must respect and obey the laws and regulations of the agencies with which they operate. Contracting parties will be required to certify that they have complied with all applicable laws and regulations governing the provision of State services, including the Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28.

Although the applicable provisions of law are detailed, you will have no difficulty following them, if you follow these simple, guiding principles:

- You may not profit from a conflict of interest on the part of a State employee.
- You may not “wine and dine” State employees.
- You may not pay a State employee anything for the performance of his or her official duties.
- You may not make illegal political contributions.
- You may not profit, directly or indirectly, from the use of any secret or confidential knowledge or data of the State that a State employee has illicitly disclosed.
- You should report any illegal or unethical behavior or any violation of the State’s ethics and business codes to the State Ethics Commission, by calling the anonymous “Hot Line” established for this purpose.

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<sup>1</sup> This Guide reflects current Conflicts Law. It should be supplemented appropriately to reflect subsequent legislative changes.

## OVERVIEW AND RULES OF CONDUCT

This Guide is designed to help private sector vendors and other entities familiarize themselves with some key parts of the New Jersey ethics standards as they apply to employees of the Executive Branch of State Government. If you do business with the Executive Branch, are regulated or licensed by, receive grants from, or lobby State agencies, or if you are considering hiring current and former State employees, this Guide is for you.

This Guide is not meant to serve as formal advice or as a substitute for legal counsel. It provides general information only and does not have the force and effect of law. It does not replace any actual laws or rules, and it does not address every ethical restriction contained in the laws and rules it summarizes. It does not cover the requirements contained in any particular agency's ethics code. Ethical issues may also be addressed in procurement, personnel, and travel rules, as well as in open meetings, open records, and criminal laws. In addition, members of particular professions (e.g., lawyers and accountants) are subject to their own codes of professional responsibility.

In this Guide, we use the term “*State employee*” to refer to State officers and employees and special State officers and employees who are subject to the ethics laws and rules discussed in this Guide. As a practical matter, virtually all employees and appointees in the Executive Branch of New Jersey State Government are “State employees.”

## GENERAL STANDARDS

As a private sector entity dealing with State agencies, you must not:

- induce or attempt to induce any State employee to violate the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28, or any code of ethics promulgated thereunder;
- influence, or attempt to influence or cause to be influenced, any State employee in his or her official capacity in any manner which might tend to impair his or her objectivity or independence of judgment;
- cause or influence, or attempt to cause or influence, any State employee to use, or to attempt to use, his or her official position to secure unwarranted privileges or advantages for you or any other person or entity; or
- undertake, directly or indirectly, any private business or commercial or entrepreneurial relationship with, or sell any interest in your business to:
  - a State employee who has any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to any State agency; or

- any person, firm, or entity with which that State employee is employed or associated, or in which he or she has an interest.

A State employee may apply to the Commission for a waiver of this particular restriction, and the Commission may grant the waiver if it finds that the relationship does not present a potential, actual, or appearance of a conflict of interest. If you enter into a business relationship that contravenes this rule, you must promptly report it in writing to the Commission.

## **GIFTS, FAVORS, SERVICES AND OTHER THINGS OF VALUE**

Do not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, honorarium or other thing of value of any kind to:

- any State employee or any member of his or her immediate family (i.e., a spouse, child, parent, or sibling residing in the same household as the employee); or
- any partnership, firm, or corporation with which the State employee is employed or associated, or in which he or she has an interest. Some things of value are obvious, such as money, stock, debt forgiveness, real estate, or automobiles. But less obvious things also have value, including offers of employment, loans, labor, rebates, price discounts, entertainment, or meals.

The effect of this standard is that you must not send holiday gifts, office-warming gifts, tokens of appreciation, or other things of value to State employees or State agencies. In addition, it is improper to invite State employees to meals, parties, sporting events, theatrical performances, and similar social functions.

A State employee can accept a gift from you or contract with you under the same terms and conditions that you offer or make available to members of the general public or to a large class of recipients, provided that the gift or contract does not violate any other Commission guidelines or a particular agency's ethics code. For example, State employees can take advantage of cell phone rate packages offered to "all public employees" and government rates offered by hotel chains. State employees can also accept nonalcoholic beverages and snack items (e.g., coffee, doughnuts, and cookies) at meetings or site visits, but they cannot accept meals.

If any State employee solicits you for a fee, commission, compensation, gift, gratuity, or other thing of value, you are required to report the occurrence promptly, in writing, to the Attorney General and to the Commission.

State employees may accept payment or reimbursement for travel expenses from a private sector entity under very limited circumstances. In each case, the employee must secure prior approval from his or her agency. The rules governing travel expenses, N.J.A.C. 19:61-6.1 et seq., are available at [www.nj.gov/lps/ethics/ecesrules.pdf](http://www.nj.gov/lps/ethics/ecesrules.pdf).

## **EMPLOYMENT OFFERS**



- ***Current State Employees***

If you offer a job to a State employee, be aware that job negotiations create a financial interest for that employee. As such, the employee will no longer be able to act in the State's interest concerning your company. Please also note that State employees must secure prior approval for secondary employment. Depending on your relationship with the employee's agency, your employment offer may be disapproved, and the State employee could be screened from taking any official action with respect to your contracts, applications, or matters in the future.

- ***Former State Employees***

After leaving State service, State employees are under a lifetime ban against the use or provision of information not generally available to the public acquired during their State employment. Further, former State employees are prohibited from representing or assisting a person concerning a particular matter if they were substantially and directly involved in that particular matter while in State employment. For more information, see "*Post-Employment Restrictions for State Employees*," at [www.nj.gov/lps/ethics/pempcode.htm](http://www.nj.gov/lps/ethics/pempcode.htm).

- ***Casino-Related Restrictions***

The Casino Control Act and the Conflicts of Interest Law contain restrictions on the employment of current State employees, their immediate family members, and former State employees and their immediate family members, by holders of and applicants for casino licenses. However, there are statutory provisions that permit waivers of some of these restrictions by the State Ethics Commission. In addition, there are restrictions on benefits that can be passed to State employees by holders of and applicants for casino licenses. Questions about these restrictions should be addressed to the Commission, at P.O. Box 082, Trenton, New Jersey, 08625-0082, or at [ethics@eces.state.nj.us](mailto:ethics@eces.state.nj.us).

## **PENALTIES**

The State Ethics Commission has the authority to impose penalties on private sector entities and individuals, and it can refer such cases to appropriate agencies when a violation is punishable by law. Violations of some of the above-described standards can result in the violator's criminal prosecution, and/or suspension, disqualification, or debarment from doing business with any State agency.

**EXHIBIT D**  
**Executive Order No. 3**  
**(Codey 2004)**

### Executive Order No. 3

WHEREAS, it is critical that all public officials earn and maintain the respect and confidence of the people they represent; and

WHEREAS, those in government hold positions of public trust that require adherence to the highest ethical standards of honesty, integrity and impartiality; and

WHEREAS, all public servants must avoid conduct which violates their public trust or which creates a justifiable impression among the public that such trust is being violated; and

WHEREAS, it is a priority of my Administration to restore the public trust and public confidence in State government; and

WHEREAS, a necessary first step in this process is to reassess the effectiveness of the ethical standards and training that guide the conduct of State officers and employees within the Executive Branch of government and the independent State authorities; and

WHEREAS, while the Executive Commission on Ethical Standards has performed a valuable role in interpreting and providing guidance on existing State ethics laws, it is important that the State of New Jersey seek additional independent review and analysis of existing ethical laws and standards;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

The State of New Jersey shall engage Special Counsel for Ethics Review and Compliance (hereinafter "Special Counsel"). The Special Counsel shall be appointed by and report directly to the Acting Governor.

Within 120 days from the date of this Order, the Special Counsel shall conduct an Ethics Compliance Audit to identify potential improvements in ethics laws, regulations, codes, training, compliance monitoring and enforcement. The Special Counsel shall report the results of the Ethics Compliance Audit to the Acting Governor.

Within 120 days from the date of this Order, the Special Counsel shall present to the Acting Governor a comprehensive Ethics Report on improvements to existing ethics

laws, regulations and codes and a Compliance Plan that will mandate measures that the Office of the Governor and each Executive Branch agency and independent authority must adopt in order to improve and strengthen compliance with State ethics laws.

The Special Counsel shall, in conjunction with the Executive Commission on Ethical Standards, develop and implement a mandatory Ethics Training Program for Executive Branch officers and employees and for the independent authorities.

The Special Counsel shall review the requirements of Executive Order No. 10 (2002), the Code of Conduct for the Governor and the Code of Conduct for the staff of the Office of the Governor and shall recommend any appropriate changes to the Acting Governor.

This Order shall take effect immediately.

GIVEN, under my hand and seal this 17th day  
of November in the Year of Our Lord, Two Thousand  
and Four, and of the Independence of the United States,  
the Two Hundred and Twenty-Ninth. /s/ Richard J. Codey

Acting Governor

[seal]

Attest:

/s/ Paul T. Fader

Chief Counsel to the Governor

**EXHIBIT E**  
**Executive Order No. 10**  
**(McGreevey 2002)**

## Executive Order No.10

WHEREAS, in our representative form of government, it is essential that the conduct of public officials earn the respect and confidence of the people; and

WHEREAS, those in government hold positions of public trust that require adherence to the highest standards of honesty, integrity and impartiality; and

WHEREAS, public officials must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated; and

WHEREAS, the Conflicts of Interest Law recognizes that it is desirable to establish meaningful ethical restrictions while accommodating the ability of State government to attract experienced, qualified persons to serve the State's citizens; and

WHEREAS, to ensure propriety and preserve public confidence, persons serving in government should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards amongst them; and

WHEREAS, it has been previously recognized by the Executive Commission on Ethical Standards ("Executive Commission") that to alleviate such a conflict, a blind trust may be utilized in certain circumstances to erect a barrier between State officers and employees and their investments so that such officers might be shielded from potential conflicts; and

WHEREAS, ownership in any closely-held corporation that does business with governmental entities can raise the appearance of a potential conflict of interest; and

WHEREAS, the public disclosure of personal financial interest of public officials will serve to maintain the public's faith and confidence in its government representatives and will guard against conduct violative of the public trust; and

WHEREAS, limits on the outside income of Cabinet-level appointees can help instill confidence in government decision-making; and

WHEREAS, it is essential that State agencies regularly reassess the effectiveness of the ethical standards that guide the conduct of their employees and officers;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

### I. PERSONAL FINANCIAL DISCLOSURE

1. Every public employee and public officer as such terms are defined in Section 6 herein shall file a sworn and duly notarized Financial Disclosure statement, or other such authentication as the Executive Commission may require to facilitate electronic filing, which is current as of five days prior to the date of filing. Each statement shall include the following information:
  - a. The name and position of the public employee or public officer;
  - b. Any occupation, trade, business, profession or employment engaged in by the public employee or public officer, his or her spouse, and dependent children;
  - c. A list of all assets having a value of more than \$1,000, both tangible and intangible, in which a direct or indirect interest is held by the public employee or public officer, his or her spouse, and dependent children, valued as of the statement date; provided, however, that when the value cannot be determined as of that date, a separate valuation date shall be specified for the particular asset. Where stocks and bonds are involved, there shall be included the name of the company, mutual fund, holding company or government agency issuing them (whenever such interest exists through ownership in a mutual fund or holding company, the individual stocks held by such mutual fund or holding company need not be listed; whenever such interest exists through a beneficial interest in a trust, the stocks and bonds held in such trust shall be listed only if the public employee or public officer has knowledge of what stocks and bonds are held). Where more than 10 percent of the stock of the corporation is held, the percentage of ownership shall be stated. The list shall include any direct or indirect interest, whether vested or contingent, in any contract made or executed by a government instrumentality. In the case of real estate interests, there shall be given the location, size, general nature and acquisition date of any real property in New Jersey in which any direct, indirect, vested or contingent interest is held, together with the names of all individuals or entities who share a direct or indirect interest therein and the name of any government instrumentality that is a tenant of such property or that has before it an application, complaint or proceeding directly affecting such property. Assets of a public employee and his or her spouse shall be listed according to the following value categories:
    - (1) greater than \$1,000 but not more than \$5,000;
    - (2) greater than \$5,000 but not more than \$25,000;
    - (3) greater than \$25,000 but not more than \$50,000;
    - (4) greater than \$50,000 but not more than \$100,000;
    - (5) greater than \$100,000 but not more than \$250,000;
    - (6) greater than \$250,000.The value of assets of (1) the dependent children of a public employee or (2) a public officer, his or her spouse and dependent children need not be disclosed unless specifically requested by the Governor or the Executive Commission.
  - d. A list of all liabilities of the public employee or public officer, his or her spouse, and dependent children valued by category in the same manner as required by paragraph 1 c.

above, except liabilities which are:

- (1) less than \$10,000 and owed to a relative as defined in section 6 hereof;
  - (2) less than \$1,000 and owed to any other person;
  - (3) loans secured by a personal motor vehicle, household furniture or appliances where the loan did not exceed the purchase price of the item and the outstanding balance did not exceed \$10,000 as of the close of the preceding calendar year; and
  - (4) revolving charge accounts where the outstanding liability does not exceed \$10,000 as of the close of the preceding calendar year. The value of liabilities of the dependent children of a public employee or public officer need not be disclosed unless specifically requested by the Governor or the Executive Commission.
- e. A list of all liabilities otherwise subject to disclosure pursuant to paragraph d. above of the public employee or public officer, his or her spouse, and dependent children which have been forgiven by the creditor within 12 months of the statement date. For each such forgiven liability so listed, the name of the creditor to whom such a liability was owed shall be stated;
- f. A list of all sources of income of the public employee or public officer, his or her spouse, and dependent children, including all compensated employment of whatever nature, all directorships or other fiduciary positions for which compensation has or will be claimed, all capital gains including a description of the individual sources of such gains, all contractual arrangements producing or expected to produce income, and all honoraria, lecture fees and other miscellaneous sources of income including, but not limited to, interest, dividends, royalties and rents. Statements filed before July 1 of any year shall disclose sources of income for the preceding calendar year. Statements filed after July 1 of any year shall provide this information for the twelve-month period immediately preceding the filing date. The amounts of such income received shall be listed and valued by category in the same manner of assets as set forth in paragraph c(1) through c(6) above. The amount of income of (1) the dependent children of a public employee, or (2) a public officer, his or her spouse and dependent children need not be disclosed unless specifically requested by the Governor or the Executive Commission. Sources of income that are not required to be reported are:
- (1) cash gifts in an aggregated amount of less than \$100 received during the preceding twelve months from a person;
  - (2) non-cash gifts with an aggregated fair market value of less than \$200 received during the preceding twelve months from a person; and
  - (3) gifts with an aggregated cash or fair market value of less than \$3,000 received during the preceding twelve months from a relative as defined in section 6 hereof.
- g. A list of any offices, trusteeships, directorships or positions of any nature, whether



compensated or uncompensated, held by the public employee or public officer, his or her spouse, and dependent children with any firm, corporation, association, partnership or business. If any firm, corporation, association, partnership or business does business with or is licensed, regulated or inspected by a State agency or does business with a casino license holder or applicant, the State agency, casino or applicant must be identified.

2. Each statement shall contain a certification by the public employee or public officer that he or she has read the statement, that to the best of his or her knowledge and belief it is true, correct and complete and that he or she has not transferred and will not transfer any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.
3.
  - a. Within 60 days from the effective date of this Order, each public employee and public officer who has not already done so shall file the signed and notarized statement required herein or other such authentication as the Executive Commission may require to facilitate electronic filing with the Executive Commission. In furtherance of its duties under the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., and pursuant to this Executive Order, the Executive Commission shall review each statement to determine its conformity with the provisions of this Order and other applicable provisions of the law. Upon approving such a statement for filing, the Commission shall file and maintain a copy of it for public inspection and copying in accordance with the procedures set forth in N.J.S.A. 47:1A-1 et seq.;
  - b. After the expiration of the initial 60-day period set forth in subsection I.3.a., each prospective public employee and public officer shall satisfy the filing requirements of this Order within 60 days of assuming office or commencing employment, unless the Executive Commission or its staff grants to such public employee or public officer an extension from the filing deadline. Such an extension shall not be granted more than twice and shall not be for more than 30 days each;
  - c. Updated statements shall be filed on the May 15 next succeeding the submission of the original statement and each May 15 thereafter provided, however that public employees and public officers who file statements on or after January 15, 2002 but prior to May 15, 2002 need not file an updated statement on May 15, 2002.
4. The Executive Commission shall keep the approved statements on file for so long as the person submitting such statements is a public employee or public officer of this State, and for five years thereafter.
5. The Executive Commission shall have the primary responsibility for assuring the proper administration and implementation of this Order and shall have the power to perform acts necessary and convenient to this end, including, but not limited to, preparing and distributing forms and instructions to be utilized by public employees and public officers in complying with this Order.
6. Except as otherwise herein provided, for purposes of this Order:
  - a. "Public employee" shall mean any person holding any of the following offices in the Executive Branch of the State Government, together with any equivalent offices added to such a list by subsequent written determination of the Governor with notice to the persons affected:

- (1) The Governor;
- (2) The head of each principal department;
- (3) The assistant or deputy heads of each principal department to include all assistant and deputy commissioners of such departments;
- (4) The head and the assistant heads of a division of each principal department, or any person exercising substantially similar authority for any board or commission which is organized as in but not of a principal department or any independent authority;
- (5) The executive or administrative head and assistant heads of
  - (i) any board or commission which is organized in but not of a principal department or
  - (ii) any independent authority;
- (6) The following members of the staff of the Office of the Governor:
  - (a) Chief of Staff;
  - (b) Chief of Management and Operations;
  - (c) Chief of Policy and Communications;
  - (d) Chief Counsel to the Governor;
  - (e) Director of Communications;
  - (f) Policy Counselor to the Governor;
  - (g) Any deputy or principal administrative assistant to any of the foregoing members of the staff of the Office of the Governor;
- (7) Members of the State Board of Agriculture;
- (8) Members of the State Board of Education;
- (9) Members of the State Board of Public Utilities;
- (10) Members of the State Parole Board; and
- (11) Presidents of the State Colleges and Universities.

b. "Public officer" shall mean:

- (1) the members of the following boards, commissions, independent authorities and public corporations, together with any other equivalent offices or bodies and such other offices or bodies added to such list by subsequent determination of the Governor:

- (a) Agricultural Development Committee;
- (b) Atlantic City Convention Center Authority;
- (c) Capital City Redevelopment Corporation;
- (d) Casino Reinvestment Development Authority;
- (e) Council on Affordable Housing;
- (f) Education Facilities Authority;
- (g) Election Law Enforcement Commission;
- (h) Hazardous Waste Facilities Siting Commission;
- (i) Health Care Administration Board;
- (j) Health Care Facilities Financing Authority;
- (k) Low-Level Radioactive Waste Disposal Facility Siting Board;
- (l) Merit System Board;
- (m) New Jersey Building Authority;
- (n) New Jersey Commission on Science and Technology;
- (o) New Jersey Economic Development Authority;
- (p) New Jersey Highway Authority;
- (q) New Jersey Housing and Mortgage Financing Agency;
- (r) New Jersey Meadowlands Commission;
- (s) New Jersey Public Broadcasting Authority;
- (t) New Jersey Racing Commission;
- (u) New Jersey Sports and Exposition Authority;
- (v) New Jersey State Council on the Arts;
- (w) New Jersey Transit Corporation;
- (x) New Jersey Transportation Trust Fund Authority;
- (y) New Jersey Turnpike Authority;
- (z) New Jersey Urban Enterprise Zone Authority;
- (aa) North Jersey District Water Supply Commission;
- (bb) Passaic Valley Sewerage Commission;
- (cc) Passaic Valley Water Commission;
- (dd) Pinelands Commission;

- (ee) Public Employment Relations Commission;
- (ff) South Jersey Food Distribution Authority;
- (gg) South Jersey Port Corporation;
- (hh) South Jersey Transportation Authority;
- (ii) State Athletic Control Board;
- (jj) State Lottery Commission;
- (kk) State Planning Commission;
- (ll) Tidelands Resource Council;
- (mm) Urban Development Corporation;
- (nn) Wastewater Treatment Trust; and
- (oo) Water Supply Authority.

(2) Individuals appointed as a New Jersey member to the following agencies:

- (a) Atlantic States Marine Fisheries Commission;
- (b) The Delaware River and Bay Authority;
- (c) Delaware River Basin Commission;
- (d) Delaware River Joint Toll Bridge Commission;
- (e) Delaware River Port Authority;
- (f) Delaware Valley Regional Planning Commission;
- (g) Interstate Sanitation Commission;
- (h) Northeast Interstate Low-Level Radioactive Waste Commission;
- (i) Palisades Interstate Park Commission;
- (j) Port Authority of New York and New Jersey;
- (k) The Port Authority Trans Hudson Corporation; and
- (l) Waterfront Commission of New York Harbor.

c. "Government instrumentality" shall mean the Legislative, Judicial, and Executive Branches of State government including any office, department, division, bureau, board, commission, council, authority or agency therein and any county, municipality, district, public authority,

public agency or other political subdivision or public body in the State;

- d. "State agency" shall mean any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission, or other instrumentality within or created by such department, and any independent State authority, commission, instrumentality or agency;
  - e. "Relative" shall mean a son, daughter, grandson, granddaughter, father, mother, grandfather, grandmother, great-grandfather, great-grandmother, brother, sister, nephew, niece, uncle or aunt. Relatives by adoption, half-blood, marriage or remarriage shall be treated as relatives of the whole kinship.
7. Further, in order to promote the highest ethical standards and to assure the fullest attention to the responsibilities of high-government office, it is appropriate and desirable to place limits on the outside income of the Governor, Cabinet members and Cabinet-level appointees (hereinafter "Cabinet-level appointee").
  8. For purposes of this Section, Cabinet-level appointees shall include: 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, 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, those members of the Governor's staff set forth herein in Section I, 6.a.(6)(a) through (g), and such other positions as the Governor may from time-to-time direct.
  9. No Cabinet-level appointee shall accept any compensation other than that paid to him by or reimbursed to the State for the performance of his official duties, including salary, honoraria, fees and such other forms of income. Receipt of all other income that is not connected with the performance of official duties by a Cabinet-level appointee is banned, 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. In order to receive such income listed above, a Cabinet-level appointee must first seek review and approval by the Executive Commission staff to ensure that the receipt of such income does not violate the Conflicts of Interest Law or any applicable code of ethics, and does not undermine the full and diligent performance of the Cabinet-level appointee's duties. All income received by Cabinet-level appointees must be disclosed on their Financial Disclosure Statements.

## II. BLIND TRUSTS

1. For those situations where a blind trust may be utilized by a public employee or public officer, his or her spouse or dependent children, and approved by the Executive 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;
  - 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 Executive Commission; and
  - l. The trust agreement shall provide the trustee will give the Executive 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 Executive Commission and with the head of the department in which the regular State employee holds his or her position. Attached to such copy shall be a brief statement outlining the business or financial interests from which the regular State employee seeks to remove himself or herself and the actual or potential conflicts of interest, or appearance of such conflicts, which he or she seeks to avoid by use of the trust agreement.

### III. INTERESTS IN CLOSELY-HELD CORPORATIONS OR SIMILAR ENTITIES

1. No regular State employee who is required by law or Executive Order to submit a Financial Disclosure Statement to the Executive Commission shall be permitted to retain any interest in any closely-held corporation, partnership, sole proprietorship, or similar business entity doing business with any federal, State, interstate or local government entity, except as provided in subsection 3 below.
  - a. Any such regular State employee who is employed as of the date of this Executive Order, and who retains any interest in any closely-held corporation, partnership, sole proprietorship, or similar business entity doing business with any federal, State, interstate or local government entity, shall notify the Executive Commission as to his or her interest, and his or her spouse's interest, in such a business entity within 120 days of the effective date of this Order. The Executive Commission shall review this disclosure statement to determine whether the business entities in which the employee has an interest are engaged in government-related business within the meaning of this Executive Order, and whether the holdings are in compliance with the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et. seq. and this Executive Order. No later than 120 days from the Executive Commission's receipt of the Financial Disclosure Statement, the Executive Commission shall notify the employee of its findings. The employee shall be afforded 120 days after the date of notification to effectuate the orderly disposition of any asset, except as may be further extended by the Executive Commission or to demonstrate to the Executive Commission that the business entity has ceased to do business with a government entity in a manner prohibited by this Executive Order.
  - b. After the issuance of this Executive Order, no State agency shall employ any person in a covered position who at the time of employment holds any interest in any closely held corporation, partnership, sole proprietorship or similar business entity doing business with any federal, State, interstate or local government entity, except as provided in subsection 3 below. No individual seeking employment in such a position shall divest a covered asset in a manner otherwise prohibited by this Executive Order for the purpose of satisfying the provisions of this Executive Order. Furthermore, no employee shall obtain any prohibited interest in a business entity during the employee's tenure.
  - c. The provisions of subsections III A1 and III A2 shall not apply to any purchase, sale, contract or agreement with any government entity other than a State agency, which is made or awarded after public notice and competitive bidding as provided by the Local Government Contracts Law, N.J.S.A. 40A:11-1 et. seq., or such similar provisions contained in the public bidding laws or regulations applicable to any government entity in this State or any other jurisdiction, provided that any such purchase, sale, contract or agreement, including a change in orders and amendments thereto, shall receive the prior approval of the Executive Commission. The provisions of subsections III A1 and III A2 do apply where the purchase, sale, contract or agreement is authorized by any of the exceptions (e.g., professional or technical services, emergent matters, and unique compatibility) provided by the Local Government Contracts Law, N.J.S.A. 40A:11-1 et. seq., or such similar provisions contained in the public bidding laws or regulations of any other jurisdiction.
2. No regular State employee or special State officer who is required by law or Executive Order to submit Financial Disclosure Statements to the Executive Commission shall be permitted to retain any

interest in any closely-held corporation, partnership, sole proprietorship, or similar business entity unless the Executive Commission shall have first determined that the employee or officer may retain such an interest in such business entity.

- a. Each regular State employee or special State officer employed or appointed as of the date of this Executive Order shall notify the Executive Commission as to his or her interest, and his or her spouse's interest, in any such business entity within 120 days of the effective date of this Order. The Executive Commission shall review the disclosure statement and shall determine whether the employee or officer may retain such interest in the business entity consistent with the standards set forth in the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et. seq., and this Executive Order. The Executive Commission shall notify the State employee or officer of its findings no later than 120 days from the Executive Commission's receipt of the Financial Disclosure Statement. The employee or officer shall be afforded 120 days after the date of notification to effectuate the orderly disposition of any asset or to demonstrate that the business entity has ceased the business activity in question.
  - b. After the issuance of this Executive Order, no State agency shall employ or appoint any regular State employee or special State officer to a covered position if such person holds any interest in any closely-held corporation, partnership, sole proprietorship or similar business entity, unless the Executive Commission has reviewed such interest and determined that the employee or officer may retain such an interest. A person seeking such employment or appointment shall disclose to the Executive Commission his or her interest, and his or her spouse's interest, in any such business entity as soon as practicable, and the Executive Commission shall render a determination no later than 30 days after receiving such a disclosure, or at its next regularly scheduled meeting. No individual seeking employment or appointment to such a position shall divest a covered asset in a manner otherwise prohibited by this Executive Order for the purpose of satisfying the provisions of the Executive Order.
3. The Executive Commission shall review all financial disclosure statements as they may from time to time be submitted by regular State employees and special State officers to determine whether the covered persons have obtained ownership or interest in any assets that give rise to a present or potential conflict of interest, or present or potential appearance of conflict of interest, within the meaning of this Executive Order.
4. Each regular State employee or special State officer shall amend his or her financial disclosure statement within 30 days of gaining knowledge of (a) his or her, or his or her spouse's acquisition of any interest in any closely-held corporation, partnership, sole proprietorship or similar business entity; or (b) the commencement of any business activity covered by the provisions of this Executive Order and as determined by the Executive Commission, including, for example, a change in business plan authorizing business activity with a federal, State, interstate or local government entity, by a business in which the officer or employee or the employee's or officer's spouse has an interest covered by this Executive Order.
5. Any regular State employee or special State officer subject to this Executive Order who acquires an interest prohibited under this Executive Order by way of inheritance, bequest or similar circumstances beyond his or her control shall follow the procedures for disclosure and disposition set forth in Section III A and Section III B of this Executive Order.
6. All required divestitures shall be subject to the following conditions:



- a. Divestiture must occur within the time periods prescribed above, unless otherwise extended by the Executive Commission.
  - b. Ownership or control of the asset may not be transferred to a member of the regular State employee's or special State officer's immediate family.
  - c. The terms and conditions of any conveyance of ownership and control of the asset shall not contain any provision regarding the return of the asset to the regular State employee or special State officer subsequent to his or her State service.
7. For the purpose of Section II and Section III of this Order:
- a. "Member of the immediate family" shall mean a spouse, child, parent or sibling residing in the same household.
  - b. "Asset" shall mean property of any kind, real and personal, tangible and intangible, having a value greater than \$1,000.
  - c. "Interest" in a closely-held corporation, partnership, sole proprietorship or similar business entity shall mean any ownership or control of any profits or assets of such a business entity.
  - d. "Doing business" with any federal, State or local government entity shall mean business or commercial transactions involving the sale, conveyance or rental of any goods or services, and shall not include such activities as compliance with regulatory procedures.
  - e. "Regular State employee" shall have the same meaning as "State officer or employee" as set forth at N.J.S.A. 52:13D-13b, and "special State officer" shall have the same meaning as "Special State officer or employee" as set forth at N.J.S.A. 52:13D-13e.
  - f. "State agency" shall mean any of the principal departments of State government and any entity allocated therein in conformance with N.J. Const. (1947), Art. V, Sec. IV para. 1.

#### IV. CODES OF ETHICS REVIEW

1. In order to ensure that Codes of Ethics adopted pursuant to N.J.S.A. 52:13D-23 fully conform to the most exacting ethical principles, each department, agency, board, bureau, commission, division or other instrumentality within a department of State government is hereby directed to undertake an immediate comprehensive review and thorough examination of their codes of ethics to ensure the strictest conformance with the Conflicts of Interest Law and this Executive Order and to report the findings of that review and to submit any revised codes of ethics to the Executive Commission within 120 days of this Order.
2. Thereafter, the staff of the Executive Commission shall require that newly-appointed officers and employees who are covered by this Executive Order attend a training session designed to educate them regarding the requirements of the Conflicts of Interest Law, any applicable code of ethics and this Executive Order. The Executive Commission staff shall also offer an annual training session to all officers and employees who are covered by this Executive Order.
3. Every State department, board, commission, authority, agency and instrumentality shall appoint an individual to serve as an ethics liaison officer. The Executive Commission staff shall hold quarterly meetings with all ethics liaison officers to ensure that the requirements of the Conflict of Interest Law

and this Executive Order are being understood and followed.

#### V. SANCTIONS

1. The failure of any regular or special State employee or officer covered by this Executive Order to comply with the provisions of this Executive Order shall constitute good cause for his or her removal from employment or office.

#### VI. RECISSION

1. Executive Order No. 2 of Governor Christine Todd Whitman and any subsequent Executive Orders issued in conjunction therewith are hereby rescinded, and any regulations adopted and promulgated thereunder are hereby declared null and void.

#### VII. EFFECTIVE DATE

1. This Executive Order shall take effect immediately.

GIVEN, under my hand and seal, this 28th day of February, in the Year of Our Lord, Two Thousand and Two and of the United States, the Two Hundred and Twenty-Sixth.

/s/ James E. McGreevey

GOVERNOR

[seal]

Attest:

/s/ Paul A. Levinsohn

Chief Counsel to the Governor

**EXHIBIT F**  
**Executive Order No. 189**  
**(Kean 1988)**

Executive Order No. 189

WHEREAS, it is essential that all persons supplying goods or services to the State of New Jersey, or performing contracts or otherwise executing public works with the assistance of and subject to the approval of the State, must meet a standard of responsibility which assures the State and its citizens that such persons will both compete and perform honestly in their dealings with the State and avoid conflicts of interest; and

WHEREAS, the New Jersey Conflicts of Interest Law prohibits State officers or employees and special State officers or employees from having any interest or engaging in any activity that is in substantial conflict with the proper discharge of their duties in the public interest or from undertaking any employment or service which might reasonably be expected to impair their objectivity or independence of judgment; and

WHEREAS, the New Jersey Conflicts of Interest Law prohibits State officers or employees and special State officers or employees from acting in their official capacity in any matter wherein they have a direct or indirect personal financial interest which might reasonably be expected to impair their objectivity or independence of judgment; and

WHEREAS, N.J.S.A. 52:34-19 provides that it shall be a misdemeanor to pay any fee, commission, compensation, gift or gratuity of any kind, directly or indirectly, to any person employed by the Department of the Treasury or to any other person in the employ of the State having any duties or responsibilities in connection with the purchase or acquisition of any property or services by the State or any agency or instrumentality thereof by or on behalf of any seller or supplier of such goods or services or other party to a contract with the State; and

WHEREAS, it is essential that persons providing goods or services to, or performing contracts for, the State be fully informed of the policies of the State concerning their relationships with State officers or employees and special State officers or employees and that these policies be uniformly applied by the various agencies of the Executive Branch; and

WHEREAS, it is therefore necessary to supplement Executive Order No. 34 (1976), which provides the grounds and procedures applicable to the debarment, suspension and disqualification of State vendors, to encompass appropriate standards prohibiting conflicts of interest on the part of present and prospective State vendors;

NOW, THEREFORE, I, THOMAS H. KEAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. As used in this Order, "vendor" means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency.

2. The executive head of each department or agency in the Executive Branch with the lawful authority to engage in State contracting shall, in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., promulgate regulations supplementing those heretofore established pursuant to Executive Order No. 34 (1976) governing the causes, conditions and procedures applicable to determinations of debarment, suspension and disqualification by the department or agency to include the minimum standards hereinafter set forth. In addition to any other filing required by law to be made, each executive head shall file with the Attorney General and Treasurer a copy of such rules and regulations as may be promulgated.

3. The rules and regulations referred to in Paragraph 2 shall include the following prohibitions on vendor activities, the violation of which shall render said vendor liable to debarment in the public interest, pursuant to the procedures established by Executive Order No. 34 (1976), by any Executive department or agency:

a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition

or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

f. The provisions cited above in paragraph 3a. through 3e. shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c.

4. The rules and regulations referred to in Paragraph 2, supra, shall require that the prohibitions set forth Paragraph 3, supra, shall be included in all requests for proposals issued by any State department or agency and in all contracts executed on behalf of a State department or agency, other than those of an interstate agency to which New Jersey is a party and contracts entered into on behalf of the interstate agency.

5. Nothing required by this Order shall be construed to limit the authority of any State department or agency to refrain from contracting within the discretion allowed by law, or to limit N.J.S.A. 52:34-19 or any other applicable statute or regulation.

6. This Order shall take effect on the ninetieth day following its execution.

GIVEN, under my hand and  
seal,  
this 20th day of July in the  
Year  
of Our Lord, one thousand  
nine  
hundred and eighty-eight, and  
of the  
Independence of the United  
States,  
the two hundred and  
thirteenth.

/s/Thomas H. Kean  
GOVERNOR

(seal)

Attest:  
/s/ Michael R. Cole  
Chief Counsel

**EXHIBIT G**  
**Executive Commission of Ethical**  
**Standards**  
**Ethics Liaison Officer Survey & Chart**



The summary chart contains the following information. (Some agencies did not respond to the ECES staff's inquiry. This information is noted in the chart.)

**Codes of Ethics:** In the first column, we have indicated whether the agency in question has its own Codes of Ethics or is covered by the Department Code. Forty-three agencies have their own Code of Ethics. Eight agencies have elected to be covered by the Department Code of Ethics.

Some agencies (4) have a Code of Ethics, but at some point since its adoption, have elected to be covered by the Department Code. In these cases, there is a "Y" in the first column, indicating that the agency does have a Code of Ethics; in parenthesis, the applicable Department Code of Ethics is indicated.

Other agencies (8) have never had a separate Code of Ethics, but have elected to be covered by the Department Code of Ethics. In these cases, there is an "N" in the first column, indicating that the agency does not have a Code of Ethics; in parenthesis, the applicable Department Code of Ethics is indicated.

One agency, the Atlantic City Convention Center Authority, is not covered by the Conflicts Law (see ACCCA discussion).

There are 11 interstate agencies that are not State agencies for the purposes of the Conflicts Law and, thus, are not required to have a Code of Ethics. This is noted in the first column.

Eight agencies have Codes of Ethics pending review by the Attorney General's office; this fact is noted. One agency, the Motor Vehicle Commission ("MVC"), is in the process of drafting its own Code of Ethics. The MVC currently is covered by the Department of Transportation Code of Ethics.

Finally, the Educational Facilities Authority has a conflicts policy. This policy has not been reviewed by the Attorney General's Office or approved by the Commission.

As to the 12 State colleges and universities, 8 have a Code of Ethics (College of New Jersey, Kean University, Montclair State University, New Jersey City University, Rowan University, Rutgers University, William Patterson University, and the University of Medicine and Dentistry of New Jersey.) Rutgers did not respond to our inquiry regarding whether they distribute their Code of Ethics; the other seven do.

In the second column, we have indicated whether the entity distributes a Code of Ethics or conflicts policy. Forty-eight agencies, 60%, distribute their Code of Ethics or conflicts policy. This includes seven of the eight colleges and universities that have a Code of Ethics.

**Financial Disclosure.** We have indicated whether financial disclosure statements ("FDS") are required to be filed by members and/or employees. FDS filing requirements are as follows.

The Order requires that the following public employees file an FDS:

VI(a) The head of a principal department;

The assistant or deputy heads of a principal department to include all assistant and deputy commissioners of such departments;

The head and assistant heads of a division of a principal department, or any person exercising substantially similar authority for a board or commission which is organized as in but not of a principal department or any independent authority;

The executive or administrative head and assistant heads of:

Any board or commission which is organized in but not of a principal department;

Any independent authority.

Executive Order No. 10 requires that the following public officers file FDSs:

VI(b). Members of boards, commissions, independent authorities and public corporations enumerated in the Order, together with any other equivalent offices or bodies and such other offices or bodies added to such list by subsequent determination of the Governor.

It should be noted that employees of authorities, boards or commissions not specified in the Order may be required to file an FDS because of their status as executive or administrative head and assistant heads of an independent authority, board or commission, Section IV(a). For example, the Executive Commission on Ethical Standards is not listed in the Order, and, thus, Commission members are not required to file an FDS. However, Rita and I file an FDS because of our status as Executive and Deputy Directors of a Commission that is in a principal department, the Department of Law and Public Safety. In these types of situations, we have simply indicated that “specified employees” are required to file an FDS.

In addition, certain New Jersey Transit and School Construction Corporation employees, although not mandated by the Order to file an FDS, are required by management of those agencies to do so.

Agencies with an “N” in the FDS column are not included in the Order. Some of the members of the independent authorities, boards, and commissions should be required to file. This recommendation was discussed in an earlier memo (No. 1).

**Ethics Training.** We have indicated whether the entity provides any type of ethics training. Only 17 of the 81 entities reviewed, 69 authorities, boards, and commissions and 12 State colleges and universities, provide any type of ethics training (21%).

**Ethics Liaison Officer.** We have indicated whether the entity has an Ethics Liaison Officer (“ELO”). The majority, forty-eight, of the authorities, boards, commissions and State colleges and universities do (59%). Under VI.3 of the Order, every State department, board, commission, authority, agency, and instrumentality is required to appoint an individual to serve as ELO. Note that there is no enforcement authority associated with the requirement.

The staff also conducted a survey of all ELOs, which is summarized in memo 10. Because many of the independent authorities, boards and commissions have ELOs, there may be some overlap between the data in the summary chart in this binder and the ELO survey summary chart.

EXHIBIT H  
AUDIT SURVEY QUESTIONNAIRE & LIST OF  
RESPONDENTS

TO: ALL CABINET MEMBERS AND AGENCY HEADS

FROM: JUSTICE DANIEL O'HERN AND PAULA FRANZESE, SPECIAL  
COUNSEL FOR ETHICS REVIEW AND COMPLIANCE

RE: EXECUTIVE ORDER NO. 3: ETHICS AUDIT

DATE: DECEMBER 2, 2004

Pursuant to Acting Governor Codey's directive at the recent Cabinet meeting, as well as Executive Order No. 3, Paragraph 2, the Special Counsel for Ethics Review and Compliance will conduct an ethics compliance audit to identify potential improvements in ethics laws, training, compliance monitoring, and enforcement. In furtherance of this directive, we have written the attached questionnaire. This questionnaire is intended to provide information to assess the level of awareness of the State's ethics laws. The term "State ethics laws" includes the *New Jersey Conflicts of Interest Law*, the *Legislative and Governmental Process Activities Disclosure Act* as well as relevant *individual agency ethics codes*, if available.

Please complete the attached questionnaire and return to me **on or before December 22, 2004**.

Thank you for your cooperation. If you have any questions, please contact us:

Paula A. Franzese  
Special Counsel for Ethics Review and Compliance  
One Newark Center  
Newark, NJ 07102  
Fax: (973) 642-8546  
Phone: (973) 642-8817  
E-mail: [franzepa@shu.edu](mailto:franzepa@shu.edu)

Survey of Executive Agencies  
Ethics Audit  
Questionnaire

Name of Agency:

Contact Person:

1. Are employees made aware of the State's ethics laws during the interview process and prior to acceptance of state employment?
2. Are new employees made aware of the general requirements of the State's ethics laws? If yes, please describe steps taken and the materials provided. Are employees required to acknowledge receipt of materials describing the State's ethics laws? Please provide copies of any materials distributed.
3. Do you have a person in your agency that is responsible for ethics issues? If yes, what is that person's responsibilities and expectations relative to ethics? Provide an estimate of the time dedicated to this effort, and if possible, provide an estimate of the number of employees/questions generated by agency personnel. Please provide the name and phone number of this individual.
4. How do you keep updated on relevant changes to the State's ethics laws?
5. Is ethics training provided? If yes, how frequently and who conducts the training/education? Is participation in training mandatory? Please provide copies of any training materials.
6. Are employees made aware of the post-state employment rules contained in the State's ethics laws? Is there any follow-up to ensure that they are in compliance with such rules?
7. Is there a formal procedure in place to address questions employees may have relative to the State's ethics laws? Please describe. Or, are they instructed to contact the Executive Commission on Ethical Standards with any and all questions?
8. Are employees encouraged to identify and report possible violations of the State's ethics laws or potential conflicts of interests? If yes, are they directed to go directly to the Executive Commission on Ethical Standards or to agency personnel? Please describe agency protocols.

9. Does your agency have any procedures in place to monitor, audit, or investigate possible instances of improper employee conduct, conflict of interests, mismanagement, waste of public funds, or any alleged abuse of public authority? Please describe.
10. Have the internal auditors ever identified an issue related to compliance with the State's ethics laws? If yes, what follow-up steps, if any, were taken by your agency?
11. How do you generally become aware of potential issues relative to compliance with the State's ethics laws or other public integrity issues?
12. What steps, if any, are taken to ensure that an employee does not have a potential conflict of interest when such employee is taking official action regarding an outside party/entity?
13. Who in your agency has signature authority to sign contracts on behalf of your agency? How is it determined who should have such authority and what measures are taken to ensure there is no conflict of interests?
14. Does your agency accept "gifts to the state"? Please provide examples of the receipt of such gifts. How are such gifts recorded or approved by your agency?
15. When hiring a former employee, what steps are taken to ensure compliance with the State's ethics laws post-employment rules?
16. Do you allow for the anonymous complaint of possible violations of the State's ethics laws or for the report of mismanagement, waste of public funds, or other public integrity issues? How do you protect such whistleblowers? Please describe your policy/protocols.
17. Do you have a procedure in place in order to notify employees of persons doing business with or seeking to do doing business with your agency? Do employees know how to check if someone is a registered lobbyist?
18. Separate from the State's ethics laws, does your agency have an ethics statement? If yes, when was it first adopted? When was it last updated? Please provide a copy of such statement with this questionnaire. How are employees made aware of this statement? How do you monitor compliance with this policy?
19. Do you keep a record of individuals who request official action from your agency?

20. Does your agency have a policy, separate from the State's ethics laws, regarding the acceptance of gifts? If so, attach a copy of the policy and indicate its effective date. Are employees required to notify anyone when they are either offered or have accepted gifts?
21. If an employee is known to violate your policy on gifts, are there any follow-up steps taken?
22. Do you have a procedure in place to notify outside entities of your gift policy? Describe the procedure and how it is implemented.
23. If applicable, has your agency undertaken a review of its procurement/contracting policies and procedures for potential flaws relating to issues of integrity? If so, please describe the nature of your review and your findings.
24. Are employees required to notify you when they are either seeking or have accepted outside employment?
25. Is there a procedure in place so that agency personnel responsible for awarding contracts can determine whether any state employee or member of such employee's immediate family either bids on or is awarded a state contract?
26. Are employees provided information regarding rules surrounding political activity of state employees? Please describe.
27. Do you have any suggestions to improve the State's ethics laws, training, or procedures relative to compliance or enforcement?



ETHICS AUDIT SURVEYS RECEIVED

**Departments**

1. Agriculture
2. Banking & Insurance
3. Community Affairs
4. Corrections
5. Education
6. Environmental Protection
7. Health & Senior Services
8. Human Services
9. Labor & Workforce Development
10. Law & Public Safety - Office of the Attorney General
11. Law & Public Safety – State Police
12. Military & Veterans Affairs
13. Personnel
14. State
15. Transportation
16. Treasury

**Authorities, Boards & Commissions**

1. Atlantic City Convention Center Authority
2. Capital City Redevelopment Corporation
3. Casino Reinvestment Development Authority
4. Educational Facilities Authority (NJEFA)
5. Garden State Preservation Trust
6. Health Care Facilities Financing Authority (NJHCFFA)
7. Housing and Mortgage Finance Agency
8. Meadowlands Commission
9. NJ Redevelopment Authority (NJRA)
10. North Jersey District Water Supply Commission
11. North Jersey Transportation Planning Authority
12. Passaic Valley Sewerage Commission
13. School Construction Corporation
14. South Jersey Transportation Authority
15. Turnpike Authority
16. Transportation Trust Fund Authority
17. Water Supply Authority
18. Economic Development Authority
19. Environmental Infrastructure Trust
20. Office of Administrative Law
21. Board of Public Utilities
22. Casino Control Commission
23. Commerce & Economic Growth Commission
24. Election Law Enforcement (Campaign and Lobbying Disclosure)
25. Executive Commission on Ethical Standards
26. Higher Education Student Assistance Authority
27. Office of Information Technology
28. Motor Vehicle Commission
29. NJ Public Broadcasting Authority
30. New Jersey Transit
31. Pinelands Commission
32. Office of the Public Defender
33. Ratepayer Advocate, Division of the
34. South Jersey Port Corporation
35. State Library
36. State Parole Board

**TOTAL: 52**

**EXHIBIT I**  
**New Jersey State**  
**Standard Employment Application**

State  
of New  
Jersey



## Application For Employment

*“People at work for better government through competence, caring, and commitment.”*

Job applicants are considered for all positions without regard to race, creed, color, national origin, sex, affectional or sexual orientation, age, religion, marital, or veterans status, or disability. The State will not tolerate any form of discrimination or sexual harassment.

The **Americans with Disabilities Act of 1990** prohibits employers from discriminating against any qualified person on the basis of a disability. The State of New Jersey makes reasonable accommodations during all aspects of the employment process, such as testing and interviews. The State also makes reasonable accommodations in the work environment to enable a person with a disability to perform the essential job functions and to participate equally with co-workers without disabilities. However, the State can only make reasonable accommodations when it is aware of a disability. **It is up to you to inform the prospective employer if you need a reasonable accommodation.** The employer may ask you for documentation to support your request for a reasonable accommodation. If you need a reasonable accommodation before the interview process begins, please inform the agency personnel office for which you are applying.

*The State of New Jersey is an Equal Opportunity Employer*

NAME (Last, First, MI.)

POSITION TITLE

DEPARTMENT

DIVISION

APPLICANT — DO NOT COMPLETE THIS SECTION



**18. FOREIGN LANGUAGE ABILITIES (Answer is Optional)**

If there are any foreign languages, including sign languages, in which you are proficient enough to communicate on a job, and are willing to use on the job (now or in the future), please list them here.

**19. CLERICAL SKILLS**

(a) TYPING?  YES  NO WPM:.....  
 (b) Stenography  YES  NO WPM:.....

Office machines operated, computer systems/software used, and/or special skills

**20. List all employment starting with present or last position and work back, including military experience. PLEASE PRINT OR TYPE. USE ADDITIONAL SHEETS IF NECESSARY.**

From Mo.: ..... Yr.: .....	To Mo.: ..... Yr.: .....	POSITION TITLE  ● Give number of staff supervised if any: .....	SUPERVISOR'S NAME  ● Telephone Number: .....	SALARY OR WAGE Starting: ..... Ending: .....
EMPLOYER'S NAME AND COMPLETE ADDRESS		<input type="checkbox"/> FULL TIME <input type="checkbox"/> PART TIME (List number of hrs. per week: .....)		
		REASON FOR LEAVING		

DESCRIPTION OF DUTIES

From Mo.: ..... Yr.: .....	To Mo.: ..... Yr.: .....	POSITION TITLE  ● Give number of staff supervised if any: .....	SUPERVISOR'S NAME  ● Telephone Number: .....	SALARY OR WAGE Starting: ..... Ending: .....
EMPLOYER'S NAME AND COMPLETE ADDRESS		<input type="checkbox"/> FULL TIME <input type="checkbox"/> PART TIME (List number of hrs. per week: .....)		
		REASON FOR LEAVING		

DESCRIPTION OF DUTIES

From Mo.: ..... Yr.: .....	To Mo.: ..... Yr.: .....	POSITION TITLE  ● Give number of staff supervised if any: .....	SUPERVISOR'S NAME  ● Telephone Number: .....	SALARY OR WAGE Starting: ..... Ending: .....
EMPLOYER'S NAME AND COMPLETE ADDRESS		<input type="checkbox"/> FULL TIME <input type="checkbox"/> PART TIME (List number of hrs. per week: .....)		
		REASON FOR LEAVING		

DESCRIPTION OF DUTIES

May we contact all employers/supervisors listed?  YES  NO (Indicate exceptions):

**21. Use this space to describe any internships, licenses, certifications or registrations related to the position for which you are applying. Give name of State in which license, certification or registration is held or dates and location of internship. If specific license or certification is required for your position, you will be required to present the appropriate credential(s) prior to employment, and you will be responsible to renew the credential(s) and advise the personnel office if the credential(s) expires or is revoked.**

[Admin 3]

**GENERAL INFORMATION** (Please print or type. Use additional sheets if necessary.)

22. Are you engaged in any business activity or employment which you plan to continue if employed by the State? If yes, your outside employment will be subject to further review regarding conflicts of interest.

**NO**     **YES** If yes, explain: \_\_\_\_\_

23. Please add any additional information which will help in placing you where you are best qualified. Include such items as: honors, hobbies, publications, volunteer work, public speaking and writing experience, membership in professional or scientific societies.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

24. List three people unrelated to you whom we may contact for information concerning your qualifications.

Name: .....	Name: .....	Name: .....
Address: .....	Address: .....	Address: .....
Phone #: .....	Phone #: .....	Phone #: .....
Occupation: .....	Occupation: .....	Occupation: .....

● Please indicate a telephone number where and at what time you may be contacted for an interview:

**I understand** that if I plan to engage in other business or employment while working for the State in any of its Departments or Agencies, prior approval will be necessary before accepting employment since there may be restrictions in accordance with the New Jersey Conflicts of Interest Law and/or the State, Department or Agency Code of Ethics.

**I authorize** my former employers to release any information they may have concerning my employment record and I release the State of New Jersey and all previous employers listed above from all liability whatsoever that may issue from securing this information. I further authorize representatives of this agency to verify any and all information contained in this application, including education, and to review any and all criminal history, military and disciplinary records of any source.

**I CERTIFY** that the information on this application is complete and accurate, to the best of my knowledge. I understand that any misleading or incorrect information may render this application void and be just cause for immediate termination if employed.

Signature: ..... Date: .....

**STOP:** Please Return Completed Application to the Personnel Office.

**THIS SECTION FOR PERSONNEL OFFICE USE ONLY**

[Admin 3]

# STATE OF NEW JERSEY AFFIRMATIVE ACTION INFORMATION FORM

This form is not part of your application for employment, and is considered confidential information that will not be used in any hiring decision. The information obtained is to comply with State and Federal recordkeeping and reporting requirements, and will be filed separately by the agency's affirmative action officer. Your cooperation is appreciated.

Job applicants are considered for all positions without regard to race, creed, color, national origin, sex, affectional or sexual orientation, age, religion, marital or veteran status, or disability.

**DATE:** \_\_\_\_\_

<b>POSITION(S) APPLIED FOR:</b>	<b>DEPARTMENT:</b>	<b>DIVISION:</b>
---------------------------------	--------------------	------------------

**REFERRAL SOURCE:**

- Advertisement  
  Employee  
  Relative  
  Walk-In  
  School  
 Employment Agency  
  NJ Department of Personnel Examination List  
 Other \_\_\_\_\_

Name of Source (if applicable): \_\_\_\_\_

**NAME: (Last, First, MI)**

**ADDRESS:**

**PHONE: Include Area Code**

(Daytime)

(Home)

**SEX:**

- Male  
  Female

**ETHNIC CATEGORIES: (Check One)**

- |   |  |   |  |
|---|--|---|--|
| <input type="checkbox"/> <b>WHITE, not of Hispanic Origin:</b> Persons having origins in any of the original peoples of Europe, North Africa, or the Middle East. | <input type="checkbox"/> <b>HISPANIC:</b> Persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race. | <input type="checkbox"/> <b>ASIAN or PACIFIC ISLANDER:</b> Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Sub-continent, or the Pacific Islands. This area includes Pakistan, Korea, China, Japan, Vietnam, Cambodia and the Philippine Islands and Samoa. | <input type="checkbox"/> <b>AMERICAN INDIAN or ALASKAN NATIVE:</b> Persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition. |
| <input type="checkbox"/> <b>BLACK, not of Hispanic Origin:</b> Persons having origins in any of the Black racial groups of Africa.                                |  |   |  |

**TO BE COMPLETED BY APPLICANT — NOT FOR INTERVIEW PURPOSES  
TO BE FILED SEPARATELY WITH AFFIRMATIVE ACTION OFFICER**

**Please open and complete all pages inside.**

*(Do Not Write on This Side)*



**EMPLOYMENT APPLICANT  
CHECKLIST**

EXHIBIT J

CASINO CONTROL COMMISSION

EMPLOYMENT APPLICANT CHECKLIST



State of New Jersey  
 CASINO CONTROL COMMISSION  
 TENNESSEE AVENUE AND BOARDWALK  
 ATLANTIC CITY NJ 08401

AMES E. MCGREEVEY  
 Governor

LINDA M. KASSEKERT  
 Chair  
 WILLIAM T. SOMMELING  
 Vice Chair  
 MICHAEL A. FEDORKO  
 MICHAEL C. EPPS  
 RALPH G. FRULIO  
 Commissioners  
 (609) 441-3422

**EMPLOYMENT APPLICANT CHECKLIST**

**I. PRE-EMPLOYMENT RESTRICTIONS AND OBLIGATIONS**

**Pre-employment Restrictions (N.J.S.A. 5:12-58b)**

A person cannot be employed by the Commission, if, within the previous three years, that person:

1. was employed by the holder of or an applicant for a casino or a gaming-related casino service industry (CSI) license; or
2. held a direct or indirect financial interest in a casino hotel or gaming-related CSI or applicant for a casino or CSI license.

**Notes:**

- a) Generally, a gaming-related CSI is a company which supplies gaming equipment or gaming services to casinos. A company which supplies non-gaming-related goods and services is not covered by the pre- or the post-employment restrictions.
- b) A "direct or indirect interest" includes, but is not limited to, ownership or partnership interest in a company and corporate stocks, bonds or other securities. The pre-employment restrictions do not apply if the interest is a non-controlling interest in a publicly-traded corporation and if the Commission concludes that such interest would not interfere with the employee's objective discharge of his or her employment obligations. In no instance shall a person who held a controlling interest (5% or more of securities of a publicly-traded corporation), be employed by the Commission.
- c) Generally, the pre-employment restriction does not apply to persons seeking secretarial or clerical positions.

**Affidavit of Non-Interest (N.J.S.A. 5:12-58c)**

Each employee of the Commission shall swear or affirm that he or she possesses no interest in any business or organization licensed by or registered with the Commission.

— **Relatives/Cohabitants Affidavit (N.J.S.A. 5:12-59e(3) -(4);  
and Commission Code of Ethics, Art. III, I-1)**

Prior to employment with the Commission and annually thereafter, employees must identify persons with whom the employee cohabits and relatives who: 1) are regulated by the Commission; 2) are employed by persons or companies regulated by the Commission; or 3) have a financial interest in persons or companies regulated by the Commission.

Note: The nature and extent of the required disclosures are addressed in the Commission's Code of Ethics, Art. III, I-1. See also, Special Restriction in Part II below.

— **Employment Subject to Background Check**

Employees of the Commission are subject to a background investigation conducted by the Division of Criminal Justice.

**II. RESTRICTIONS AND REQUIREMENTS DURING EMPLOYMENT**

— **The New Jersey Conflicts of Interest Law  
(N.J.S.A. 52:13D et seq.)**

The Conflicts Law applies to Commission employees to the same extent as other State employees, except as provided in the Casino Control Act (Act), N.J.S.A. 5:12-59a. Together, section 59a of the Act and the Code of Ethics, impose more limitations and restrictions than does the Conflicts Law, at least as they apply during the course of employment with the Commission. However, the post-employment restrictions of the Conflicts Law restrictions go beyond those imposed by the Act in that the former employee's spouse may also be affected.

— **Code of Ethics (N.J.S.A. 5:12-59e)**

Commission employees are held accountable to a strict Code of Ethics which governs many and varied aspects of employment.

— **Financial Disclosure (N.J.S.A. 5:12-58e)**

Each employee of the Commission, except for secretarial and clerical personnel, shall file with the Executive Commission on Ethical Standards a financial disclosure statement listing all assets and liabilities, property and business interests, and sources of income of said employee and his or her spouse. Such statement shall be under oath and shall be filed at the time of employment and annually thereafter.

2. directly or indirectly coerce, attempt to coerce, command or advise any person to pay, lend or contribute anything of value to a party, committee, or organization, agency or person for political purposes; or
3. take any part in political campaigns or the management thereof; provided, however, that nothing shall prohibit a person from voting as he chooses or from expressing his or her personal opinions on political subjects and candidates.

#### Outside Employment (N.J.S.A. 5:12-59g)

Employees of the Commission are permitted to obtain other gainful employment as shall not interfere with their duties to the Commission. All employees must advise the Commission prior to accepting such employment, and, except for secretarial and clerical personnel, written approval must be obtained from the Executive Secretary prior to commencing such employment.

#### Special Restrictions Concerning Immediate Family Members, Other Relatives and Non-related Cohabitants

1. For purposes of these restrictions, the following definitions apply:

- a) "cohabit" means reside in a house, apartment or other living quarters with any other person or persons;
- b) a "member of the immediate family" of a Commission employee means the spouse, children, parents and siblings who share the same household with the Commission employee; and
- c) "related by blood or marriage" shall include the employee's spouse, parent, grandparent, child, sibling, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, sister-in-law, brother-in-law, first cousin, whether by whole or half blood, by marriage, adoption or natural relationship, and the spouse of any such individual.

2. Unless waived by the Commission, no Commission employee may cohabit with any person who is employed by a holder of or applicant for a casino license or holding, intermediary or subsidiary company thereof (hereafter collectively referred to as "Casino Company"). Violation of this provision will result in termination of Commission employment. Further, if the person cohabiting with the Commission employee is a member of the employee's immediate family, both the employee and the relative may be subject to penalties under the Conflicts of Interest Law, N.J.S.A. 52:13D-17.2.
3. No Commission employee shall act in his or her official capacity on any matter concerning the employer of a cohabitant, spouse, parent, child or sibling (without regard to residence in the same household) where the employer is a holder of or applicant for any license or registration issued by the Commission.
4. No Commission employee may act in an official capacity in any matter wherein the employee or the spouse, child, parent or sibling of such employee (without regard to residence in the same household) has a direct or indirect personal financial interest that might reasonably be expected to impair the objectivity or independence of judgment of such employee.

5. To ensure compliance with the Act and the Code of Ethics, employees are required to disclose the following information:

- a) the names of persons related by blood or marriage who are either employed by any casino company or who are persons whose qualification is required for any CSI license; and
- b) the names of all persons with whom the employee cohabits who either 1) hold or have applied for any license or registration issued by the Commission, or 2) hold any financial interest in any casino company, or 3) are employed by any casino company.

III. POST-EMPLOYMENT RESTRICTION (N.J.S.A. 5:12-59e(2) and -60b and d, and N.J.A.C. 19:40-2.6)

Post Employment Restriction

See attached copy of N.J.A.C. 19:40-2.6.

Acknowledgements

I acknowledge that the position for which I have applied is in the classified/unclassified (circle one) service, and that only classified employees are entitled to the full protections of the Civil Service Laws and Department of Personnel regulations. I also acknowledge that, if I were to accept an unclassified position with the Commission, I will be an at-will employee who serves at the pleasure of the Commission which, notwithstanding any provisions of any Personnel Policy Manual, Employee handbook or written or oral representation of any member or employee of the Commission, may choose to terminate my employment at any time with or without cause.

I further acknowledge that all employees of the Commission are confidential employees for purposes of the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and are therefore not eligible to form or join an employee labor organization or union.

I further acknowledge that I have received a copy of the Commission's post employment regulations and that the provisions of Law and Policies of the Commission described above have been explained to me to my satisfaction, and I understand and agree that my employment by the Commission is at all times subject to these policies and provisions as they exist today or may be from time to time amended.

\_\_\_\_\_  
(Name Please Print)

\_\_\_\_\_  
(Applicant's Signature)

\_\_\_\_\_  
(Date)

5. To ensure compliance with the Act and the Code of Ethics, employees are required to disclose the following information:

- a) the names of persons related by blood or marriage who are either employed by any casino company or who are persons whose qualification is required for any CSI license; and
- b) the names of all persons with whom the employee cohabits who either 1) hold or have applied for any license or registration issued by the Commission, or 2) hold any financial interest in any casino company, or 3) are employed by any casino company.

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\_\_\_\_\_  
(Name Please Print)

\_\_\_\_\_  
(Applicant's Signature)

\_\_\_\_\_  
(Date)

**EXHIBIT K**  
**Executive Commission on Ethical**  
**Standards**  
**Post-Employment Restrictions Chart**



## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
Agriculture Development Committee	Y	Y	Y	Y	Y
Atlantic City Convention Center authority	N - Not covered by Conflicts Law.	N/A	Y	N/A	N/A
Atlantic Interstate Low-Level Radioactive Waste Compact	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A
Atlantic States Marine Fisheries Commission	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A
Board of Mediation	Y	Y	N	N	Y
Building Authority	N – Code pending approval from A.G.’s Office.	N	Y	Y	N
Camden Economic Recovery Board	N – Follows EDA Code.	Y	N	N	N
Capital City Redevelopment Corporation	N – Code pending approval from A.G.’s Office	N	Y	N	N
Casino Reinvestment Development Authority	Y	Y	Y	Y	Y

## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
Catastrophic Illness in Children Relief Fund	Y	Y	N	N	Y
Commission on Science and Technology	Y	Y	Y	N	Y
Commission on Spinal Cord Research	Y	Y	N	Y	Y
Council on Affordable Housing	Y	N	Y	N	Y
Council on Local Mandates	Y	Y	N	Y	Y
Council on the Arts	Y	No response.	Y	No response.	Y
Cultural Trust	Y	Y	N	N	Y
Delaware River and Bay Authority	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A
Delaware River Basin Commission	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A

## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
Delaware River Joint Toll Bridge Commission	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A
Delaware River Port Authority	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A
Delaware Valley Regional Planning Commission	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A
Development Authority for Small Businesses, Minorities & Women Enterprises	Y	Y	N	Y	N
Developmental Disabilities Council	Y	Y	N	N	N
Economic Development Authority	Y	Y	Y	Y	Y
Educational Facilities Authority	N – Has conflicts policy.	Y – Distributes policy.	Y	Y	Y
Election Law Enforcement Commission	Y	Y	Y	N	Y
Environmental Infrastructure Trust	N – Follows DEP Code.	Y	Y	Y	N

## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
Executive Commission on Ethical Standards	Y	Y	Y	Y	Y
Garden State Preservation Trust	N	N	Y	No response.	N
Governor's Council on Alcoholism and Drug Abuse	Y – Follows Treasury Code.	Y	N	N	Y
Health Care Administration Board	N – Follows Dept. of Health and Sr. Services Code.	N	Y	N	Y
Health Care Facilities Financing Authority	Y	Y	Y	N	Y
Higher Education Student Assistance Authority	Y – Follows Dept. of State Code.	Y	Y	N	Y
Historical Commission	Y	Y	Y	N	Y
Housing and Mortgage Finance Agency	Y	Y	Y	N	Y
Individual Health Coverage Board	Y	Y	N	N	Y

## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
Interstate Environmental Commission	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members		N/A
Lottery Commission	Y	Y	Y	N	Y
Meadowlands Commission	Y	Y	Y	N	Y
Merit System Board	N – Covered by DOP code.	Y	Y	N	N
Motor Vehicle Commission	N – Covered by DOT code (Code in Progress).	Y	Y	Y	Y
New Jersey Transit Corporation	Y	Y	Voluntarily file.	Y	Y
North Jersey District Water Supply Commission	Y	No response.	Y	No response.	No response.
North Jersey Transportation Planning Authority	N	N	Y	N	N
Palisades Interstate Park Commission	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A

## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
Passaic Valley Sewerage Commission	Y	N	Y	N	Y
Passaic Valley Water Commission	N	N	Y	No response.	N
Pinelands Commission	Y	Y	Y	Y	Y
Planning Commission	Y	No response.	Y	No response.	No response.
Port Authority of New York and New Jersey	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A
Public Broadcasting Authority	Y	Y	Y	N	Y
Public Employment Relations Commission	Y	Y	Y	N	Y
Racing Commission	Y – Follows LPS Code.	Y	Y	N	N
Redevelopment Authority	Y	Y	Y	Y	Y

## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
School Construction Corporation	N – Code pending approval from A.G.’s Office	N	Y – Voluntarily	N	Y
Small Employer Health Benefits Program	Y	Y	N	N	N
South Jersey Port Corporation	Y	N	Y	No response.	Y
South Jersey Transportation Authority	Y	Y	Y	Y	Y
South Jersey Transportation Planning Organization	N – Follows SJTA Code.	Distributes SJTA Code.	N	Attend SJTA training sessions.	N
Sports and Exposition Authority	Y	Y	Y	Y	Y
State Athletic Control Board	N – Follows LPS Code.	No response.	Y	No response	Y
State Colleges and Universities:					
College of New Jersey	Y	Y	The College President.	N	Y

## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
Kean University	Y	Y	The University President.	N	Y
Montclair State University	Y	Y	The University President.	N	Y
New Jersey City University	Y	Y	The University President.	N	Y
New Jersey Institute of Technology	N – Code pending approval from A.G.’s Office	N	The Institute President.	N	N
Ramapo College of New Jersey	N – Code pending approval from A.G.’s Office	N	The College President.	N	N
Richard Stockton College of New Jersey	N – Code pending approval from A.G.’s Office	N	The College President.	N	Y
Rowan University	Y	Y	The University President.	N	Y
Rutgers, the State University of New Jersey	Y	No response.	The University President.	No response.	Y
Thomas Edison College	N – Code pending approval from A.G.’s Office.	N	The College President.	N	Y



## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
William Patterson University	Y	Y	The University President.	N	Y
UMDNJ	Y	Y	The University President.	N	Y
State House Commission	N	N	N	N	N
State Museum Board	N	N	N	N	N
Tidelands Resource Council	N – Follows DEP Code.	N	Y	N	Y
Transportation Trust Fund Authority	N – Code pending approval from A.G.'s Office	N	Y	N	N
Turnpike Authority	Y	Y	Y	N	Y
Urban Enterprise Zone Authority	Y – Follows Commerce Code.	N	Y	Y – Attend Commerce training sessions.	N
Victims of Crime Compensation Board	Y	No response.	Y	No response.	Y

## State of New Jersey Authorities, Boards, and Commissions Ethics Table

Authority or Commission	Code of Ethics	Distributes Code of Ethics	Financial Disclosure	Provide Ethics Training	ELO
Water Supply Authority	Y	Y	Y	Y	Y
Waterfront Commission of New York Harbor	Not a State agency for purposes of the Conflicts Law.	N/A	Y - NJ members	N/A	N/A

EXHIBIT L

SAMPLE ETHICS TRAINING PROTOTYPES



REDHAWK



**Best Practices Ethics Programs**

for the World's Corporations

## RedHawk Communications, Inc. Firm Profile

Since 1992, RedHawk Communications has created custom designed ethics programs for the world's leading corporations. Working with leading CEO's, General Counsels, and Human Resource executives around the world has given us unmatched knowledge and experience in developing effective, best practices ethics programs.

We created video and online training for a leading pharmaceutical company's worldwide ethics training and social responsibility programs, developed a highly recognized industrial goods company's worldwide training initiative, and designed an international manufacturer and services company's award-winning Business Practices Guidelines and program rollout.

RedHawk's hallmark is customization. Creating effective ethics programs requires relevant content and an effective delivery strategy. We customize both the ethics content and delivery approach (video, online, instructor-led) to fit our client's culture, policies, structure and budget. This custom communication and training methodology engages employees, changes behavior and creates ethical culture.

A partial list of our services includes:

- **Code of Conduct:** Writing, design and translations.
- **Online Training:** From a collection of developed modules, RedHawk specializes in developing customized online training that matches any size company's needs.
- **Instructor Led Training:** Complete program design includes session material, video production, train the trainer, and translations.
- **Custom Consulting:** RedHawk delivers custom consulting and production services and offers a wide range of ethics program support and development.
- **Ethics Communication Coach:** A unique subscription coaching and resource product providing quarterly communications tools for ethics and compliance professionals with limited time, budget and resources.

We organize these services into three, client objective driven models. Whether you are just launching an ethics programs, creating a best practices program or seeking to develop a groundbreaking initiative, we have a model that fits your needs.

Ethics are more than just a business to us. We were founded on the belief that we can make a positive impact through ethics and Corporate Social Responsibility (CSR) programs. We hope to have the opportunity to make a positive impact within your organization.

## Introduction

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The U.S. Sentencing Guidelines and Sarbanes-Oxley have raised the bar on ethics programs. Previously, a standard ethics program included issuing a Code of Conduct, implementing baseline employee training and a Helpline. The new U.S. Sentencing Guidelines require an "effective program" and a "culture that promotes ethical behavior." Sarbanes-Oxley requires accurate financial reporting, conflicts of interest disclosure and avenue for reporting wrong-doing.

RedHawk Communications offers a prototype for meeting these requirements:

## Best Practices Ethics Program Model

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**Overall Objective:** To meet U.S. Sentencing requirements of "an effective program" and "promoting ethical culture." Meet Sarbanes-Oxley requirements. (Note this is an example of a standard program. Some elements may be changed or modified based on client needs.)

### *Step 1 – Audit Employee Attitudes and Current Communications and Training*

#### **Objectives:**

- o Review current communication and training (Code of Conduct, Executive Communications, Training Modules).

Determine current executive/manager/employee attitudes regarding ethics in the workplace.

- Do employees feel comfortable raising ethical issues?
- Do managers "walk the talk"?
- Can employees and manager identify and resolve ethical issues?
- Is there cynicism in the workplace?
- What is the "tone at the top"?

#### **Key Elements of Audit:**

- Online Survey
- Phone Interviews
- Focus Groups

#### **Deliverable:**

- A report that details key findings. The report guides the next phase of the program and provides a baseline for measuring the effectiveness of the program.



## Step II – Develop Comprehensive Ethics Communication and Training Plan

**Objective:** Develop a comprehensive communication and training strategy that details a roadmap for changing employee behavior and creating an ethical culture.

### Key Elements of Strategy:

- **Key Messages** – What key messages and themes will grab attention?
- **Branding the Program** – What is the personality of the program? What images and words are associated with the program?
- **Identification of Communication and Training Channels** – What channels are already in place? Will new channels need to be created?
- **Training Strategy** – What is the best strategy given the company structure and culture? Online? Instructor-led? Blended?
- **Development of Communication and Training Tools**
- **Rollout Timeline**

### Deliverable:

- A comprehensive training and communication plan.

## Step III – Training and Communication Solution

**Objective:** Deploy behavior changing training and communication.

### Key Elements of the Program

- **Code of Conduct Training**
  1. Online Code of Conduct training for managers
  2. Follow-up facilitated sessions with managers
  3. Online Code of Conduct training for employees
  4. Follow-up facilitated sessions between managers and employees
- **Topic Specific Online Training**
  1. Conflicts of Interest, Harassment, Sexual Harassment
- **Communication Tools**
  1. Ethical Leaders Network (ELN) – Quarterly communication to managers.
  2. RedHawk customizes ELN material to meet goals of communication plan.



REDHAWK



**Best Practices Ethics Programs**  
for the World's Corporations

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#### Step IV – Year Two

*Objective:* Assess effectiveness of program and gain input for Year Two program development.

- Repeat Step 1

#### Additional Services

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During the development of the Best Practices Ethics Program model other needs may be identified, including:

- Steering Committee Formation
- Leadership Communication Strategy
- Senior Level Training
- Multi-tiered Training and Communication – webcasts, instructor-led, video
- Institute Performance Related Incentives



## **Legal Compliance and Ethics Center:**

LCEC is about much more than compliance training. It is an integrated platform for sharing knowledge, encouraging communication between employees and those who manage risks, and for tracking the success of your training efforts.

LCEC is the first entirely Web-based platform designed to deliver customized education in workplace ethics and legal compliance, directly to employees' desktops. LRN accomplishes this effectively, consistently and at a low per-employee cost. With a growing roster of subscribers, LCEC is setting the standard for distributing critical knowledge quickly, uniformly and accurately throughout an enterprise. More than 100 of America's most prominent organizations, including Procter & Gamble, Walt Disney Company, Shell Oil, Dow Chemical, The New York City Council, Dupont, Motorola, Freddie Mac, The State of Illinois, 3M, WR Grace, Viacom and many others, use LCEC, which makes the program available to millions of employees worldwide. Many of the leaders in New Jersey's business community, including Pfizer, Johnson and Johnson, Tyco, Hoffman LaRoche, and Wyeth, have embraced LRN's LCEC solution as well.

LRN hosts, maintains, and updates all content so that subscribers don't have to invest in new technology or place new demands on their Information Technology departments.

LCEC provides our customers' employees with access to a robust 200 course curriculum, addressing over 3500 topics, and developed with our customers, in response to real-world issues and experiences. Our solution specialists provide implementation and ongoing support assuring continued organization success. LRN produces content through our global network of ethics, legal, and educational experts, all overseen by our internal team of seasoned attorneys and educational designers. LCEC's centerpiece is an interactive tutorial for each module that includes guidelines, quizzes, what-if scenarios, Top 10 lists, frequently asked questions, customizable links to additional information (for example, New Jersey State guidelines and/or policies), and other resources that give your workforce essential insight into the ethical and legal issues that matter to State operations.

Finally, LCEC enables customers to customize and track their employee's learning. Administrative tools include tailored course curriculums, as well as simple, flexible reporting and the exporting of user activity data. You'll know exactly who learned what and when – essential elements of satisfying your own reporting requirements, as well as protecting the State's interests and maintaining a workforce that can identify compliance issues in the workplace and respond to them with confident, appropriate behavior. Our pricing for LCEC is designed to allow you to drive ethics and legal knowledge to every corner of the State government.

We understand that your priorities for the State of New Jersey include providing ethics education to all State employees and providing Sarbanes Oxley and financial integrity education to State Division Directors and Cabinet Officers. We have that capability. LRN has a significant curriculum in general ethics and in the area of financial integrity. Most of our over 100 LCEC customers incorporate ethics training into their curriculums. Some of the courses include:

- Business Ethics: An Introduction
- Ethical Awareness and Decision Making

- Ethical Sales Practices
- Ethics Overview
- Recognizing Conflicts of Interest
- Resolving Conflicts of Interest
- The Ethical Board: Best Practices
- The Ethical Board: Enhancing Effectiveness
- Understanding Your Company's Code of Conduct

We also have introduced several courses that directly address the areas of corporate governance, financial integrity and Sarbanes-Oxley. These include:

- Sarbanes Oxley Act Section 404: Management Assessment of Internal Controls
- Sarbanes Oxley: Implementing Internal Controls
- Sarbanes Oxley: Overview
- Your Responsibilities in Financial Reporting

In addition to our existing library of courses (See attached LCEC directory), there are two types of custom modules LRN can create for a customer.

#### **Customer provided content**

In this circumstance the State would submit all the content and LRN's team would work with the designated resources to turn the content into an interactive, engaging module. As we did with the State of Illinois, where we actually created a single comprehensive ethics course addressing the high points found within over one hundred pages of State of Illinois regulations, we would tailor the module(s) to address specific State of New Jersey regulations and guidelines.

#### **LRN developed content**

Additionally if the State had a need for a unique module LRN will actually create the substantive content using a subject matter expert just as we do for our library modules. LRN modules typically contain a ten-page introduction, three lessons that are 20 pages each, and a ten-question quiz. In addition to supporting your custom content requirements, LRN's LCEC user interface can be customized to meet the State of New Jersey's needs. LCEC Customization areas include:

- State logo on every page
- Welcome screen templates
- Welcome message text (i.e. a message from the Governor)
- State specific policies for each module
- State specific contact page for each module
- Quiz completion messages/Module completion certificates
- User profile information
- Email notifications
- Pop-up bulletins
- Tracking options

Although until we have specifically defined the recommended solution for The State of New Jersey it is impossible to provide you with an estimated cost, I would like to provide you with insight into LRN's pricing algorithm. Costs may vary greatly depending upon several variables, including:

- number of courses
- Customized course development
- Number of employees to be addressed
- Certifications administered
- Additional or unique requirements for the State of New Jersey

**Implementation Support:**

To support the rollout of the State's customized program and modules to users, LRN would create a permanently assigned team; including a Knowledge Services Account Executive (KSAE) who coordinates the distribution of technical, marketing and other LRN resources as needed. All of the KSAEs have multidisciplinary backgrounds in technology, systems development, knowledge management, e-learning and customer support. The KSAE will work with you to develop a strategic program management plan, customize your site, prepare a rollout plan and marketing campaign, execute the rollout and assist with reporting needs to ensure a successful program over the life of our relationship.

LRN would look forward to partnering with the State of New Jersey to identify the combination of existing LRN and/or custom-developed courses that will best meet your objectives for the State. We would be glad to help you do a risk assessment analysis (See attached Risk Assessment Guide) and help you to determine where the education gaps are, and the curricula that would best address the specific needs of your various constituencies, or employee populations, within the State.

I am attaching a copy of the testimony provided by Dov Seidman, LRN's CEO, to the United States Sentencing Commission so that you may gain additional insight into LRN's philosophy and approach to helping organizations address these challenging issues. Please call me on 908-730-0075 if I can address any questions or provide you additional information. We are very interested in working with you and your colleagues, and we look forward to assisting you in developing a comprehensive Ethics and Compliance Program for the State of New Jersey. I look forward to speaking soon.

Best Regards,

Jeff Knapp

Jeff Knapp

LRN

908-730-0075

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**LRN**

**Course List**  
**Legal Compliance and Ethics Center™ (LCEC®)**

Last update: January 2005

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## ANTITRUST COURSES

Antitrust: Dealing with Customers,  
Dealers and Distributors  
Antitrust: How Mergers and  
Acquisitions are Reviewed  
Antitrust VII: Monopolization (Part I)  
Antitrust VII: Monopolization (Part II)  
Antitrust: Overview  
Antitrust: Overview (Reasoning)  
Antitrust: Price Discrimination  
Antitrust: Talking with Your  
Competitors  
Antitrust: Talking with Your  
Competitors (Reasoning)  
Antitrust VIII: Trade Associations  
Global Competition

## AUTOMOBILE COURSES

Overview of the Federal Motor  
Vehicle Safety Standards  
Overview of Labeling and Marking  
Requirements  
The Tread Act

## BANKING AND FINANCE COURSES

Business Transactions Secured with  
Collateral  
Equal Credit Opportunity: An  
Overview (Reg. B)  
Money Laundering and the USA  
PATRIOT Act  
The Truth in Lending Act (Reg. Z)

## BUSINESS ETHICS COURSES

Business Ethics: An Introduction  
Business Ethics: An Introduction  
(Reasoning)  
Developing an Ethical Culture  
Ethical Awareness and Decision  
Making  
Ethical Awareness and Decision  
Making (Reasoning)  
Ethical Leadership  
Ethical Sales Practices  
Ethics Overview  
Recognizing Conflicts of Interest  
Resolving Conflicts of Interest

Resolving Conflicts of Interest  
(Reasoning)  
The Ethical Board: Best Practices  
The Ethical Board: Duties and  
Responsibilities  
The Ethical Board: Enhancing  
Effectiveness  
The Ethical Board: Oversight of  
Ethics  
Understanding Your Company's  
Code of Conduct

## COMMERCIAL PRACTICES COURSES

Addressing Potential Whistleblower  
Claims  
Advertising: Rules for Certain  
Industries and the Web  
Advertising: The Basics  
Attorney-Client Privilege  
Attorney-Client Privilege  
(Reasoning)  
Avoiding Illegal Competition  
Avoiding Illegal Competition  
(Reasoning)  
Careful Communication  
Careful Communication (Reasoning)  
Contracts I: What to Do and What to  
Avoid  
Contracts I: What to Do and What to  
Avoid (Reasoning)  
Contracts II: Interpreting and  
Enforcing the Contract  
Corporate Governance and  
Authority  
Corporate Insiders and Short Swing  
Trading  
Corporate Political Action  
Committees  
Corporate Political Activity  
EU Competition  
Federal Sentencing Guidelines: The  
Rules of the Road  
Giving Your Deposition  
Information Security  
Insider Trading: Avoiding Risky  
Behavior  
Insider Trading: Avoiding Risky  
Behavior (Reasoning)  
International Bribery and Corruption  
International Privilege  
Legal Basics for Sales  
Representatives I

Legal Basics for Sales  
Representatives II  
Legal Basics for Sales  
Representatives I: Healthcare  
Legal Basics for Sales  
Representatives II: Healthcare  
Privacy Issues  
Responsible Business  
Communication  
Retail Sales: Working with the  
Public  
Telemarketing  
Understanding Products Liability  
Using Wireless Telephones  
Using Wireless Telephones  
(Reasoning)  
What You Need To Know About E-  
mail  
What You Need To Know About E-  
mail (Reasoning)

## **CORPORATE GOVERNANCE (Coming Soon)**

Sarbanes Oxley Act Section 404:  
Management Assessment of  
Internal Controls  
Sarbanes Oxley: Implementing  
Internal Controls  
Sarbanes Oxley: Overview  
Your Responsibilities in Financial  
Reporting

## **CORPORATE SOCIAL RESPONSIBILITY (Coming Soon)**

Corporate Social Responsibility:  
North America  
Corporate Social Responsibility:  
Europe

## **DEFENSE AND GOVERNMENT CONTRACTS COURSES**

Accounting Principles for Managers  
Basic Labor Charging  
Gifts and Gratuities  
Government Contracts: An  
Overview

Government Contracts: Post-  
Contract Issues  
Government Contracts: Truth in  
Negotiations  
Hiring Former Government  
Employees  
Leveling the Playing Field: The  
Procurement Integrity Act  
Product Quality and Substitution  
Understanding and Applying  
Overhead Rates  
Understanding Bid Protests  
Understanding Voluntary Disclosure

## **E – COMMERCE COURSES**

Advertising and Marketing on the  
Internet  
E-Commerce Basics  
Intellectual Property on the Internet  
Internet: Global Business Issues  
Internet: Navigating Around Legal  
Liability

## **EMPLOYMENT AND HUMAN RESOURCES COURSES**

Affirmative Action Fundamentals  
Age Discrimination: Avoidance and  
Prevention  
Age Discrimination: Legitimate  
Distinctions  
Americans with Disabilities Act:  
Introduction  
Americans with Disabilities Act:  
Introduction (Reasoning)  
Americans with Disabilities Act:  
Reasonable Accommodation  
Attorney-Client Privilege and  
Internal Company Investigations  
Avoiding Workplace Violence  
Child Labor  
Classifying Contingent Workers  
Contingent Workers: Pay, Benefit,  
and HR Issues  
Disabilities in the Workplace: A  
Supervisor's Guide  
Diversity (Coming Soon)  
Drug-Free Workplace: DOT  
Requirements  
Drug-Free Workplace Programs:  
Private Employers  
Drug-Free Workplace Programs:  
Private Employers (Reasoning)

Employment Law for Leaders  
(Coming Soon)  
Equal Employment Opportunity  
Equal Employment Opportunity  
(Reasoning)  
Fair Labor Standards  
Family and Medical Leave Act  
Family and Medical Leave Act  
(Reasoning)  
HIPAA Amendments, State Law,  
and Federal Law  
HIPAA Coverage, Requirements,  
and Enforcement  
Immigration: Employing Non-US  
Citizens  
Mine Safety and Health Act: Basics  
Mine Safety and Health Act:  
Inspection and Discrimination  
OSHA: Citations, Penalties and  
Appeals  
OSHA: Introduction to Safety  
Standards  
OSHA: Recording and Reporting  
Preventing Workplace  
Harassment (Employee Edition)  
Preventing Workplace Harassment  
(Employee Edition) (Reasoning)  
Preventing Workplace Harassment  
(Supervisor Edition)  
Preventing Workplace Harassment  
(Supervisor Edition)(Reasoning)  
Record Retention Policies: Spotting  
the Issues  
Record Retentions Policies:  
Spotting the Issues (Reasoning)  
Substance Abuse Testing  
UK Disability Law  
UK Equal Opportunities  
Union Awareness  
What You Can Ask In An Interview  
What You Can Ask in an Interview  
(Reasoning)

## **ENERGY COURSES**

Understanding the Public Utility  
Holding Company Act

## **ENVIRONMENT COURSES**

Disposing of Hazardous Wastes  
Environmental, Health, and Safety  
Issues for Manufacturers

Hazardous Materials Transportation:  
Preshipping  
Hazardous Materials Transportation:  
Shipping  
Underground Storage Tanks I:  
Performance and Operating  
Requirements  
Underground Storage Tanks II:  
Releases, Records, and  
Enforcement

## **HEALTHCARE COURSES**

The AdvaMed Code on Interactions  
with Healthcare Professionals  
Anti-Kickback Rules for Medical  
Providers and Pharmacies  
Confidentiality Under HIPAA:  
Patient Rights  
Confidentiality Under HIPAA: Using  
Information  
Fraud and Abuse in the  
Pharmaceutical Industry: Basic  
Issues  
Fraud and Abuse in the  
Pharmaceutical Industry: Special  
Topics  
HIPAA Privacy for Pharmaceutical  
Companies: Patient Rights  
HIPAA Privacy for Pharmaceutical  
Companies: Using Information  
HIPAA Privacy for Employers  
Sponsoring Group Health Plans  
How to Avoid Healthcare False  
Claims  
How to Be Prepared if the  
Government Investigates  
Legal Basics for Pharmaceutical  
Sales Reps  
Marketing and Promotion of Medical  
Products: Basic Issues  
Marketing and Promotion of Medical  
Products: Special Topics  
OIG Model Plans: What Makes an  
Effective Compliance Program  
Patient Dumping:(EMTALA)  
Security of Electronic Health  
Information Under HIPPA  
The PhRMA Code  
Understanding the Path Rules

## **INSURANCE COURSES**

IMSA Principles of Ethical Market  
Conduct (Part I)



IMSA Principles of Ethical Market  
Conduct (Part II)  
Privacy Issues for the Specialty  
Insurer  
Privacy Laws: Protecting Personal  
Information  
Redlining: The Basic Issues

## INTELLECTUAL PROPERTY COURSES

Avoiding Copyright Infringement  
Handling Competitive Intelligence  
With Care  
Intellectual Property Overview  
Intellectual Property: Overview  
(Reasoning)  
Patents: Getting and Keeping a  
Patent  
Patents: Using, Protecting and  
Respecting Patent Rights  
Protecting Company Trade Secrets  
Protecting Company Trade Secrets  
(Reasoning)  
Trademarks: An Introduction  
Trademarks: Protecting, Using and  
Respecting Them

## INTERNATIONAL BUSINESS COURSES

Antiboycott: How to Handle Boycott  
Requests  
Avoiding FCPA Violations  
Customs: Doing Business Abroad  
Economic Trade Sanctions and  
OFAC  
EU Competition: Dealing with  
Competitors  
EU Competition: Dealing with  
Competitors (Reasoning)  
EU Competition: Mergers and  
Monopolies  
EU Data Protection and Privacy  
EU Privacy: Managing Employee  
Information  
Export Controls: Commercial  
Products (BIS)  
Export Controls: Military Products  
(ITAR)  
Global Competition  
Global Health and Safety  
International Agreements: What  
Exporters Need to Know

International Bribery and Corruption  
International Contract Fundamentals  
International Intellectual Property  
International Privilege  
UK Disability Law  
UK Equal Opportunities  
Understanding the Foreign Corrupt  
Practices Act  
Understanding the Foreign Corrupt  
Practices Act (Reasoning)  
Valuing and Responding to  
Employees' Concerns

## OIL AND GAS COURSES

The Petroleum Marketing Practices  
Act (PMPA)

## SECURITIES COURSES

Anti-Money Laundering and the  
Institutional Customer  
Careful Communication for the  
Securities Industry (Coming Soon)  
Employee Trading and Other  
Outside Activities  
Ethics in the Security Industries  
Global Bribery Prevention in the  
Securities Industry (Coming Soon)  
Global Money Laundering  
Prevention in the Securities  
Industry  
Insider Trading for the Securities  
Industry (Coming Soon)  
Institutional Supervision in the  
Securities Industry (Coming Soon)  
Money Laundering, Securities, and  
the USA PATRIOT Act  
MSRB Restrictions on Political  
Contributions I: Contributions and  
Solicitations  
MSRB Restrictions on Political  
Contributions II: Consultants,  
Record-Keeping and Penalties  
Registration and Regulatory  
Structure  
Restrictions on Gifts and  
Entertainment  
Suitability (Private Bank)  
Suitability (Retail)  
Suitability and the Institutional  
Customer  
Supervision in Practice  
Supervision Of Communications  
with the Public

# LRN

Your Responsibilities as a  
Supervisor

Your Responsibilities as a  
Supervisor (Institutional)

Your Responsibilities as a  
Supervisor (Retail)

Careful Communication (Overview)

Competing for Business (Overview)

Doing Business Abroad (Overview)

Protecting and Respecting

Intellectual Property (Overview)

Workplace Discrimination and

Harassment (Overview)

## OVERVIEW COURSES

Business Ethics (Overview)

# LRN

## DATA SHEET

### GEMS™ Case Management

### Governance and Ethics Management System™ (GEMS™)



The GEMS™ Case Management application provides compliance officers and business managers with enterprise-wide capability to capture, investigate and resolve allegations with consistent reporting across jurisdictional and operational boundaries. The GEMS™ Case Management application is a service delivered over the Internet. You install no software and can easily roll out the system across the enterprise. Also, the intuitive user interface allows your employees to adopt it quickly and willingly, with little or no training.

#### KEY BENEFITS

##### Identify and Manage Legal Risks Around the Globe

The GEMS™ Case Management application enables you to identify, manage, and resolve the risks from allegations of misconduct that arise globally. A single system allows you to capture allegations, inquiries and referrals wherever and whenever they may occur.

##### Include all Parties Across the Enterprise

You can bring all stakeholders into a case, including employees, managers, partners, and vendors. This distributed approach greatly multiplies the impact of your compliance, risk and governance resources. All relevant parties contribute their part, thereby reducing bottlenecks in the process. All access rights are granted on a need-to-know basis.

##### Prioritize, Manage and Resolve Issues with a Common Platform

You have a standardized methodology and terminology for handling any incident within your company. All users utilize a consistent, verifiable approach to manage and report allegations, inquiries and referrals across the enterprise. This includes the proper responses to incidents, retention of key documents, and management of outcomes.

#### KEY FEATURES

##### Flexible Workflow Engine

A flexible, rule-based engine allows you to specify data requirements and automated actions to key system events. You may customize the workflow capabilities (routing, branching, escalation, etc.) to the case approval process to ensure data quality.

##### Customizable Organizational Structure

Role-based security features enable you to retain complete administrative control of the users' access to data and their privileges within the application. In other words, you determine both the information and features available to them. The same individual may be assigned distinct roles on separate cases.

##### Board Level and Operational Reporting

The reporting engine includes a number of interactive charts that present key governance and compliance metrics. The charts enable the review of activity/inactivity, the identification of trends and also provide access to detailed case information.

##### Privacy and Security

Your company's account has its own discrete databases so that no data exposure to other customers can occur. In addition, the GEMS™ Case Management application ensures that your confidential data is protected inside and outside your organization using the following measures: role-based access controls, silent logon, parameterized passwords, hardware tokens, Private Key Infrastructure (PKI), and Secure Socket Layer (SSL).

## ABOUT LRN

LRN provides governance, ethics and compliance management solutions that inspire and reinforce ethically aware, responsible conduct and set higher standards in organizations throughout the world. Our Governance and Ethics Management System™ (GEMS™) offers global corporations an integrated solution for corporate governance and compliance management.

Our flagship Legal Compliance and Ethics Center™ (L-DEC®) is a web-based education platform that offers more than 200 courses covering over 3,600 topics, and has helped millions of employees throughout the world become better informed, act more responsibly and work more productively.

Our 10 year legacy in Expert Legal Research and Analysis, which has provided unparalleled legal research at significant cost savings to the most prestigious legal departments in the world.

Together, our comprehensive suite of solutions helps strengthen your corporate reputation by fostering a consistent, ethical and compliant corporate culture across the breadth of the enterprise.

For more information about LRN, please contact us at:

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## AN INTEGRATED SUITE OF CAPABILITIES

GEMS™ enables companies to efficiently manage governance, compliance and risk management processes from applications that are built on unified information architecture. This information architecture provides a single definition of your compliance programs, certifications, cases, and employee communications—all aspects of your governance process. Whether you implement one application or the entire suite, GEMS™ enables you to share unified information across the enterprise so you can make smarter decisions with better information.

Following is the list of the applications that comprise GEMS™: Global Electronic Helpline, Certification, Registry, Education and Communication, Case Management, Dashboard, Benchmarking, Survey, and Predictive Modeling.

## SYSTEM ARCHITECTURE

As with all GEMS™ applications, the GEMS™ Case Management application utilizes fully redundant network architecture to ensure that the system is available for you 24/7.

- Firewall: Cisco Pix
- Web servers: Apache 2.0.50, Tomcat 5.x, IIS 5.0 Server
- Database: Microsoft SQL Server
- Middleware: Netegrity SiteMinder Security Proxies, Netegrity SiteMinder Policy Servers, COM+ Components

## FEATURE LIST

- Comprehensive, extensive search capabilities—find cases by status, organization, country, financial exposure—19 different dimensions
- Each user gets a personalized dashboard, which allows you to set your own display preferences for tables and graphs. You can arrange the display of your dashboard elements on top, bottom, center, left or right.
- "My Cases" displays all incidents in which you play a role. "Watch List" allows you to display a subset of the most important cases, and to keep them there for a set period of time.
- Email notifications occur based on role assignments, status changes, time limits, and more.
- Reports and graphs can be generated on routine or ad hoc basis. Users specify parameters including geography, business units, and date ranges.
- Reporting data can be exported to Excel with formatting that mirrors the online experience.
- Tooltips provide ready access to Help and make the interface highly intuitive
- Allegations have the following tabs: general, caller/witnesses, BPO/participants, parties, narratives, disclosure, litigation and expenses
- Each case includes flags for Audit Committee Requested, Sarbanes Oxley Related, Supervisor/Manager Involvement, and Attorney Client Privilege
- Supervisor dashboard can exclude cases from reports until they are ready
- Closed loop: includes determination of whether caller was satisfied.
- Read/write privileges vary depending on role
- Configurable categories and subcategories for describing a case/allegation
- System allows each case to be tagged with legacy or alternative tracking id's
- Printer friendly format for entire case allows user to keep hard copy for records. User may select and print only the sections that apply to him if desired.

# LRN

## DATA SHEET

### GEMS™ Certification

Governance and Ethics Management System™ (GEMS™)



The GEMS™ Certification application provides compliance and ethics officers with enterprise-wide capability to track and manage employee conformity with corporate policies. The GEMS™ Certification is delivered to you as a service over the Internet.

#### KEY BENEFITS

##### Tailor the Enforcement of Corporate Policy Worldwide

The GEMS™ Certification application empowers you to more effectively manage global policy certification campaigns on quarterly, yearly or ad hoc basis. A secure certification portal allows you to initiate, deploy and monitor certification campaigns worldwide.

You can use GEMS™ Certification to comply with the law, ensure business practices and procedures are being followed and create awareness and accountability in employees.

##### Provide Employees with an Easy Attestation Process

Every employee worldwide with an email account can easily acknowledge and attest to a given policy and explain any potential non-conformity they may have. With this single tool, you can manage certification and attestation in multiple areas—Laws, Ethics, and Compliance or Audit, and Finance or other areas like Human Resources, Environment, Health and Safety.

##### Address the Causes for Non-Compliance

After you identify any employees who do not conform to your corporate policies, you can directly address their compliance gaps. The GEMS™ Certification application includes a supervisor review process that guides supervisors to follow up with those employees. In addition, the application integrates with LRN's Legal Compliance and Ethics Center™ (LCEC®) to ensure that employees receive the appropriate training and education.

#### KEY FEATURES

##### Configurable Campaign Manager

GEMS™ Certification gives you full control of managing your certification program. You can assign start and end dates to your certification campaign, target your employee groups for certification, and actively monitor the progress of your certification campaign through reports and charts. The system also enables you to send out reminder e-mails on a periodic basis to employees who have not completed their certifications. You can manage your certification campaign either enterprise wide or a department, subsidiary, or operating company level based on your unique needs. Access and authoring rights may be granted distinctly to such groups as Ethics & Compliance, Legal, Audit, Finance, Human Resources, Corporate Secretary, and Environmental, Health & Safety.

##### Certification questions tailored to your needs

GEMS™ Certification comes with a set of pre-defined certification questionnaires covering various relevant topic areas. You can use these certification questionnaires as is or you can choose to modify them or create new ones to suit your needs.

##### User-Friendly Interface

Standard Internet user interface of the certification makes sure that users are easily able to navigate and respond to questions. Standard navigation techniques allow for easy adoption with little or no training. Employees have two ways to respond to their relevant certifications. They can access a particular certification that comes to them through email. In addition, they may utilize the portal to access all certification to which they are assigned.

#### Automated Followup and review process

The GEMS™ Certification application automatically routes non-compliant matters to the appropriate supervisors for review. As employees respond to a certification campaign, those answers that are potentially non-compliant are forwarded to designated recipients to determine the necessary follow-up. Accountability is built into the system.

#### Robust Analysis and Reporting

The management console provides a graphical display of campaign status (e.g., percent completion) and outcomes (e.g., percent non-compliant). Interactive tables allow sorting and filtering of data. You also have the option to export data for additional reporting.

#### Privacy and Security

Your company's account has its own discrete databases so that no data exposure to other company's can occur. In addition, the GEMS™ Certification application ensures that your confidential data is protected inside and outside your organization using the following measures: role-based access controls, silent login, parameterized passwords, hardware tokens, Private Key Infrastructure (PKI), and Secure Socket Layer (SSL).

### AN INTEGRATED SUITE OF CAPABILITIES

GEMS™ enables companies to efficiently manage governance, compliance and risk management processes from applications that are built on unified information architecture. This information architecture provides a single definition of your compliance programs, certifications, cases, and employee communications—all aspects of your governance process. Whether you implement one application or the entire suite, GEMS™ enables you to share unified information across the enterprise so you can make smarter decisions with better information.

Following is the list of the applications that comprise GEMS™: Global Electronic Helpline, Certification, Registry, Education and Communication, Case Management, Dashboard, Benchmarking, Survey, and Predictive Modeling.

### SYSTEM ARCHITECTURE

As with all GEMS™ applications, the GEMS™ Certification application utilizes fully redundant network architecture to ensure that the system is available for you 24/7.

- Firewall: Cisco Pix
- Web servers: Apache 2.0.50, Tomcat 5.x, IIS 5.0 Server
- Database: Oracle 9.2.05
- Middleware: Netegrity SiteMinder Security Proxies, Netegrity SiteMinder Policy Servers, COM+ Components

### FEATURE LIST

- Enables enterprise-wide certification of compliance with specific policies
- Allows for autonomous department or subsidiary-based configuration and management of certification activities
- Send email notifications/alerts based on certification status
- Provides employees with access to a particular certification from an email or to all assigned certifications through a portal
- Provides open text fields and attachment capability for employees to explain responses as necessary
- Gives employees a defined period of time to get more information and update their answers before a campaign is over
- Link to LCEC@direct users to specific courses depending on type of certification
- Prints a record of completed certifications for employees
- Automatically routes potential non-compliant matters to designated supervisors for review
- Gives reviewers same mechanism to refute non-compliant answers ("false positives")
- Tracks and reports key metrics through interactive graphs and tables
- Exports data to Microsoft Excel and PowerPoint

# LRN

DATA SHEET

GEMS™ Assessment

Governance and Ethics Management System™ (GEMS™)



GEMS™ Assessment provides compliance officers and business managers with an enterprise-wide capability to assess and monitor the organization's ethical health. It enables you to develop a comprehensive baseline of ethics and compliance information and compare it to relevant benchmark data that puts your company's findings in context. GEMS™ Assessment pairs best-in-class content and benchmark data with flexible technology platforms. A professional, full-service team focuses on assessing and fulfilling your needs, whether they are for a single assessment or a multi-year, finely segmented survey and measurement plan.

GEMS™ Assessment utilizes Internet based technologies and requires no software installation.

## KEY BENEFITS

### Monitor the Ethical Health of Your Company

GEMS™ Assessment enables you to develop a robust picture of key ethical and compliance characteristics of your organization. It facilitates ongoing assessment to measure evolution of those trends in response to internal ethics initiatives. These trends can be compared against those occurring in peer or other comparable organizations.

### Assess Issues on a Global, Regional and Local Scale

GEMS™ Assessment allows you to administer assessments to as wide or narrow an audience, as you desire. You can survey the entire enterprise or target specific issues and groups in English or other foreign languages.

### Refine Your Governance, Compliance and Risk Management

You can utilize the actionable feedback to revise policies, address risk areas, and refine training programs. By measuring the impact of specific program elements, you have a stronger basis for developing superior compliance programs. Furthermore, GEMS™ Assessment gives you reliable benchmark data to set your company's results in context and informs the appropriate actions you should take.

## KEY FEATURES

### Best-in-class content

LRN's partnership with a content partner, an established ethics industry leader for over 80 years, brings an unmatched combination of experience in survey content and sampling/analytical methodologies. Our expertise covers over 140 surveys in LRN's Legal Compliance and Ethics Center™ (LCEC®) and the only robust longitudinal benchmarked data set on ethical

perceptions available today. Our highly experienced team also assists clients in developing and delivering customized assessments based on specific situations and needs. The assessment design is focused on delivering actionable insights and not merely interesting information.

### Robust technology and methodology

Best-practice survey design is rigorously enforced during the development of every assessment. In addition, statistically valid sampling methodologies are applied while administering the assessments and analyzing the responses. Clients can therefore be confident of the accuracy of the results obtained through this process. A phased approach to distributing the assessments and driving completion through regular targeted reminders, further promotes high response rates and resulting accuracy.

### Privacy and Security

An essential feature of the GEMS™ Assessment is that employees are assured that the anonymous third-party data collection process leaves them free to be completely accurate and candid in their responses without fear of discovery or retribution. While many companies have internal survey applications, they cannot get accurate responses from employees wary of HR administered questionnaires. Aggregate data is stored without user-identifying information, thereby removing risks associated with legal discovery. However, specific assessments such as those measuring risk can be administered to identified users if necessary.

In addition, the GEMS™ Assessment service ensures that your confidential data is protected inside and outside your organization using: role based access controls, parameterized passwords, Private Key Infrastructure (PKI), and Secure Socket Layer (SSL).

## OPTIONAL VALUE ADDED SERVICES

### Multi-year follow-on surveys

Monitoring the evolution of employee attitudes and perceptions, especially in response to changes in an ethics and compliance program, is a key means for promoting effective managerial action.

### Tailored assessments

Company wide baselines provide a comprehensive picture of a company's ethical and compliance health. However, change is most purposefully effected when the trends in specific demographic sub-populations such as managers, knowledge-workers, business units, functional specialties or geographies are teased out and more deeply analyzed. GEMS™ Assessment allows you to discover these nuances through carefully tailored surveys that elicit a deeper understanding of the organization.

### Multi-language and paper-based capabilities

GEMS™ Assessment is available in a variety of languages to enable a broader assessment of your global workforce. A parallel paper-based option is available to enable assessment of employees who are not online.

### Custom data analysis

The comprehensive data sets gathered through the assessment process enable a broad range of insightful analyses, especially when combined with other available data such as LRN's company-specific training data. Additional analytical exercises can be undertaken to assist companies in answering specific questions about their organizations. Early awareness of such needs enables further tailoring of the baseline assessment in order to provide the most actionable insights.

### User data scrubbing

Often, organizations are unsure whether they possess accurate and complete user-data such as e-mail and demographic information. Our GEMS™ Assessment team utilizes a thorough set of screens to determine the quality of user-data sets and make recommendations for improvement.

## AN INTEGRATED SUITE OF CAPABILITIES

GEMS™ enables companies to efficiently manage governance, compliance and risk management processes from applications that are built on a unified information architecture. This information architecture provides a single definition of your compliance programs, certifications, cases, and employee communications—all aspects of your governance process. Whether you implement one application or the entire suite, GEMS™ enables you to share unified information across the enterprise so you can make smarter decisions with better information.

Following is the list of the applications that comprise GEMS™: Global Electronic Helpline, Certification, Registry, Education and Communication, Case Management, Dashboard, Benchmarking, Survey, and Predictive Modeling.

## SYSTEM ARCHITECTURE

As with all applications in the GEMS™ suite, the GEMS™ Assessment application is built using industry standard database, tools and multi-tier architecture. The GEMS™ Assessment application is hosted on a secured, redundant network architecture to ensure that you have 24/7 availability of the system.

## FEATURE LIST

- Utilizes best-of-class survey content from LRN and our content partner
- Sets your results in context with benchmark data
- Launches survey from email with a simple click with easy navigation
- Provides several response types – e.g., binary (yes/no), multiple choice, multiple response, free text
- Can be configured to capture responses as anonymous or identified
- Allows a survey to be finished in multiple sessions – i.e., reverts to last stored state
- Provides adaptive branching based on how questions are answered
- Allows shuffled choices, with easy selection and randomization of questions
- Supports multiple languages
- Supports longitudinal studies – i.e., stores sample data over time
- Provides FAQ and online Help facilities
- Allows customization of interface with logos and colors



# LRN

## DATA SHEET

### GEMS™ Helpline

Governance and Ethics Management System™ (GEMS™)



The GEMS™ Helpline application provides compliance and ethics officers with enterprise-wide capability to receive anonymous reports or inquiries and follow-up promptly and confidentially. GEMS™ Helpline integrates telephone and web hotline intake methods into the system, route incidents to the appropriate departments for resolution, and maintain a unified report of all activities. The GEMS™ Helpline application is offered as a service over Internet.

#### KEY BENEFITS

##### Take Confidential, Anonymous Stakeholder Reports

Confidentiality is crucial to empower employees to communicate without fear to those who need to know. Any stakeholder (e.g., employee, vendor, shareholder) can submit an incident anonymously and trust that it will remain anonymous. All issues are handled in a confidential manner as an incident is brought to resolution. Also, you can receive an incident any day of the week, any time of day, from anywhere in the world. You can deploy the web portion only where a telephone hotline does not exist, or combine it with a telephonic option. The application covers every location where you do business to extend your ability to respond to the interests of your stakeholders.

##### Minimize Financial, Legal and Reputational Risk

Immediate access to reports minimizes financial, legal and reputational risks. The system instantly alerts select individuals or groups to new reports based on defined characteristics and directs them to review the report via the Web. Audit and oversight committees maintain oversight with summary and trend reports.

##### Deter Future Fraud, Abuse and Violations

Helpline as a part of an effective ethics reporting program, helps your organization not only identify and resolve issues, but deters and prevents future fraud, abuses, and violations.

#### KEY FEATURES

##### Globally Available System

GEMS™ Helpline is a globally available to your organization and is tailored to your needs. The customized web pages, and customized violation categories and definitions build awareness as well as promote your ethics policies.

##### Integrated Web and Telephonic Communications

GEMS™ Helpline is an integrated Web/telephony reporting system that stakeholders see as a safe reporting mechanism. All information is kept completely encrypted, confidential and anonymous on a third party system, increasing confidence in your helpline reporting program.

##### Automated and Accurate Report Distribution

GEMS™ Helpline sends immediate alerts, when an issue is reported, to pre-selected individuals. You can customize this distribution based on your unique organization's needs.

The system also generates summary and trend reports detailing overall reporting activity and violation types, as well as breakdowns by divisions, locations, violation category and more. These reports put data at your fingertips for you to effectively manage and monitor your helpline.

##### Privacy and Security

Your company's account has its own discrete databases so that no data exposure to other customers can occur. In addition, the GEMS™ Helpline application ensures that your confidential data is protected inside and outside your organization, using role-based access controls, Secure Socket Layer (SSL), and by encrypting all reports and data.

## AN INTEGRATED SUITE OF CAPABILITIES

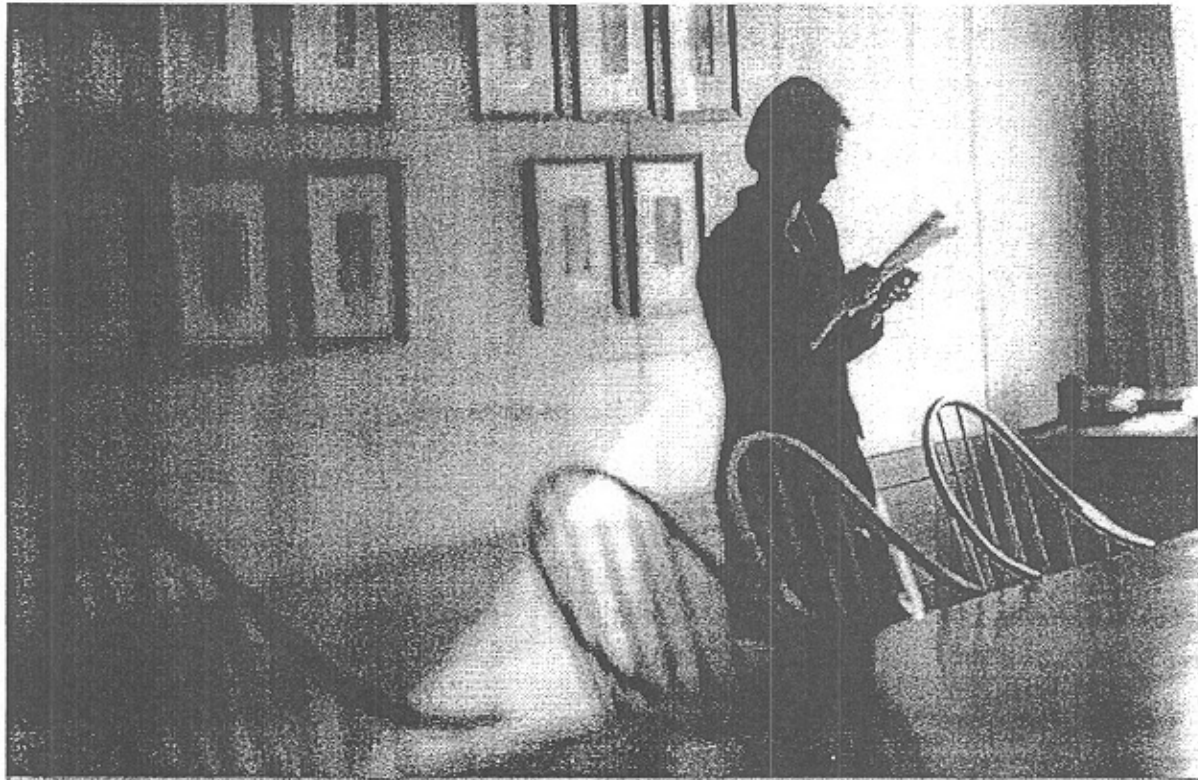
GEMS™ enables companies to efficiently manage governance, compliance and risk management processes from applications that are built on a unified information architecture. This information architecture provides a single definition of your compliance programs, certifications, cases, and employee communications—all aspects of your governance process. Whether you implement one application or the entire suite, GEMS™ enables you to share unified information across the enterprise so you can make smarter decisions with better information.

Following is the list of the applications that comprise GEMS™: Global Electronic Helpline, Certification, Registry, Education and Communication, Case Management, Dashboard, Benchmarking, Survey, and Predictive Modeling.

### FEATURE LIST

- A completely encrypted, confidential and anonymous third-party system.
- Integrated Web/tel ephony reporting system globally accessible 24x7.
- Customized Web pages and printed materials that build awareness of the reporting system and reflect an organization's branding and ethics policies.
- Customized violation categories and definitions for your corporate environment
- Immediate alerts dispatched to pre-selected individuals.
- Customized distribution based on client-controlled report characteristics.
- Repository for all information, notes, transcripts, surveillance files and documents.
- Confidential feedback loop to minimize frivolous and unfounded reports.
- Workflow and staffing management tool that provide assignment notifications, analysis tools and a variety of status reports.
- Drill-down capabilities through customizable organization levels (headquarters, division, region, district, area, location etc).
- A complete audit trail that captures all actions associated with resolution activity.
- Report tool that put all data at your fingertips and allow for searching and sorting of reports.
- Highlighting of incidents that need greater management oversight
- Anonymous discussion threads and Webchats for clarifying issues after the initial report.
- Automated generation of summary and trend reports detailing overall reporting activity and violation types, as well as breakdowns by divisions, locations, violation category and more.
- Analytical tools for assessing report and violation characteristics across the organization and broken down by divisions, departments and locations.
- The ability to measure report and violation activity over time to assess the impact of changes to policies, procedures or personnel.
- Secure username/password access to all encrypted reports and data.
- Flexible storage options for compliance with retention policies.

# LRN



**Promoting an Ethics-Inspired, Legally-Compliant Corporate Culture**  
Legal Compliance & Ethics Center (LCEC) Ethics Curriculum

May 2004

For More Information on LRN and LCEC,  
simply contact us at 310-208 5400 or [lcec@lrn.com](mailto:lcec@lrn.com)

## MEMORANDUM

### LCEC Curriculum Development: Using Risk Analysis and Competency Development Criteria

#### Introduction

There are two methodologies that we suggest an LRN partner use in working with us to develop an LCEC curriculum:

- Legal and ethical risk analysis, following the principle set forth in the proposed revisions to the Federal Sentencing Guidelines, and
- Ethical Competencies development among the partner's employees and leadership.

These approaches are complementary, providing education to meet the often-overlapping goals of a "compliance program" and an "ethics program." The audience learns about legal risks and ethical risks, and masters a framework for resolving issues.

The courses selected might come from LRN's existing library, or be developed either for an individual customer or with a content advisory customer group.

There are two other critical elements in the process:

- Development of the Custom Code of Conduct course
- "Right-sizing" and planning the education program to meet multi-year goals.

The Code is partly education, but more importantly is the communications and enlistment vehicle that anchors the entire ethics program: It answers the big question of WHY the audience is taking these courses. It provides the core messages that should make a person want the education that the LCEC offers, and should win support for the ethical principles and legal limits that ethics and compliance programs establish.

Thus, LCEC module selection and Custom Code module development should reflect the same themes and emphasize the same areas of perceived risk.

The customer's written code will likely already reflect risk analysis, and will be a starting point, but course selection and Code module development will require refinement of focus, because an LRN partner will likely be limited in its ability to cover all code subjects with full modules.

To be effective, an education program must be focused, and busy employees may prove unreceptive to a perceived overload of coursework. If on-line education is combined with live sessions, then there may be fuller coverage of fewer subjects. Different populations of employees may require different subject emphasis. These are some of the factors that LRN can discuss with a customer, drawing on the experience of other customers, to help develop a program.

Attached are two tools to use with LRN KSAE's, a risk analysis grid and a three-year Ethical Competency Curriculum.

### Using the Tools

The Risk Analysis Grid: The method is to (a) associate business activities with potential legal risks, (b) prioritize those risks, (c) assess the need for education in managing them, and (e) choose either existing or custom courses to address priority areas. The courses selected should then be interwoven with the ethics courses in the Ethical Competency Curriculum to set out a three-to-five year plan. More specifically:

1. The risk assessment for the education portion of the ethics and compliance program should, of course, be linked to risk assessment addressing the program as a whole.
2. Before undertaking any legal risk assessment, a partner should consult with its legal department. They should provide advice about what, if any, part of the risk assessment should be conducted under legal privilege.
3. At the partner's request, an LRN advisor can join the process, or offer comments upon request.
4. A multitude of data informs a risk analysis. Internal documents reflecting lawsuits, investigations, regulatory issues, audit reports and letters to the CEO are examples of documents to be gathered from across the company for review.
5. A company should take a cross-functional approach. Representatives from line organizations and staff functions like law, regulatory compliance, finance management, auditing, security, human resources and information technology should be brought together.
6. They should review the list of business activities we have prepared, brainstorm others, and rank order each area using two criteria: (1) where are risks the greatest? and (2) for which of those risks are the gaps in education the greatest?
7. Participants might also consider whether there are new policies or processes that require special emphasis. For instance, the launch of a new anti-money laundering process may be strengthened by contemporaneous on-line education and discussion in that area.

8. Risk analysis should also include segmentation of the employee population, recognizing that different parts of the organization face different risks. For instance while the sales force receives antitrust education, the IT group may receive education on privacy.
9. Most companies have problem-solving or meeting facilitation capability, and these should be used in this exercise. Alternatively, a company can use something so simple as having everyone prioritize each issue using a score of 1 to 5, and using the mean number of the consolidated responses.
10. Numerical ranking is not the final step. A team might usefully discuss what the numbers mean in light of their experience and judgment.
11. The team should document the assessment process and the outcome, both to review their choices periodically, and to create a record that the program was developed with the proper criteria and rigor.

The Model Ethics Curriculum. This model is designed to show the potential that the LCEC library offers a company to create a robust three-year curriculum of ethics courses, starting with an introduction to the subject of business ethics through to building an ethical culture. We invite you to work with us to choose the courses that are right for your organization and budget, mixing in certifications to ensure accountability and surveys to measure effectiveness of the overall compliance and ethics program.

## LRN CONFIDENTIAL: LCEC CURRICULUM RISK MATRIX

STEPS:

1. Select and add activities to fit the business.
2. Associate legal and ethical risks.
3. Rank order by scale of risk, education gaps.

Activities	Issues	Audience	Priority	Comments
Corporate General		(examples)		
Governance	Board Oversight	Board, Senior Leaders		
		Board, Senior Leaders		
		Board, Senior Leaders		
		Board, Senior Leaders		
	Management Role	Officers, line mgmt		
		Officers, line mgmt		
		Officers, line mgmt		
		Officers, line mgmt		
	Insider Trader	All		
		Insiders		
Litigation Risk	Inaccurate Records	All users		
		All who write		
		All who create or manage		
	Investigations	All		
Employment	US Civil Rights	All		
		Line mgrs, HR		
		All		
		All		
		Line mgrs, HR		
	Harassment	All		
		Line mgrs, HR		
	Safety	All		
		Mgrs, Safety Sups		
		Mgrs, Safety Sups		
		All		
	General	Purchasing, BD		
		HR		
	Co-employment	HR, Line Mgrs		
		HR, Line Mgrs		
	Employee privacy	HR, Line Mgrs		
		HR		
	Other			
General Commercial				
Branding	IP protection	All		
		Sales, mktg		
Advertising	Accuracy, Fair comp	Sales, mktg		
		Sales, mktg		

Activities	Issues	Audience	Priority	Comments
Sales Practices	Contracts	Sales		
Sales Channels	Telemarketing			
	E-commerce	e-sales, mkt,devel		
		e-sales, mkt,devel		
		e-sales, mkt,devel		
	Retail	All		
	Export	Sales		
		Sales		
		Sales		
Competition	Antitrust	Mgt, Sales, Mkt		
		Mgt, Sales, Mkt		
		Mgt, Sales, Mkt		
		Mgt, Sales, Mkt		
		Mgt, Sales, Mkt		
Agents	FCPA, kickbacks			
R&D, Customer lists	Trade Secrets	All		
Manufacturing	Environment	Plant Mgrs		



**Model Ethics Curriculum With Certification and Surveys: Year 1**

<b>Launch : The Code</b>	<b>Pre-launch</b>	Education strategy: web or blended with live sessions Marketing campaign e-mail, team meetings
	<b>Education</b>	Code of Conduct Understanding Your Code of Conduct
	<b>Certification</b>	Code Acknowledgement Understanding of Reporting Procedure Have disclosed Potential Issues
<b>Second Quarter</b>	<b>Education</b>	Business Ethics: An Introduction Conflicts of Interest: spotting the issues
	<b>Survey</b>	Course feedback General Ethics Attitude Survey
<b>Third Quarter</b>	<b>Education</b>	Ethical Awareness and Decision Making Restrictions on Gifts and Entertainment
	<b>Survey</b>	Course feedback
<b>Fourth Quarter</b>	<b>Education</b>	Ethics Overview Resolving Conflicts of Interest
	<b>Survey</b>	Course feedback

**Ethics Curriculum With Certification and Surveys: Year 2**

<b>First Quarter</b>	<b>Education</b>	Ethical Leadership Valuing and Responding to Employee Concerns
	<b>Certification</b>	Code Acknowledgement Have Disclosed Potential Issues Conflicts of Interest Disclosure
<b>Second Quarter</b>	<b>Education</b>	Developing An Ethical Culture The Ethical Board: Duties and Responsibilities
	<b>Survey</b>	Course feedback General Ethics Attitude Survey
<b>Third Quarter</b>	<b>Education</b>	Your Responsibilities in Financial Reporting Ethical Sales Practices
<b>Fourth Quarter</b>	<b>Education</b>	Insider Trading Ethical Leadership Refresher TBD
	<b>Survey</b>	Course feedback

**Ethics Curriculum With Certification and Surveys: Year 3**

<b>First Quarter</b>	<b>Education</b>	Refresher: Business Ethics: An Introduction Recognizing Conflicts of Interest
	<b>Certification</b>	Code Acknowledgement Have Disclosed Potential Issues Conflicts of Interest Disclosure
<b>Second Quarter</b>	<b>Education</b>	Refresher: Business Ethics: An Introduction Ethical Awareness and Decision Making
	<b>Survey</b>	Course feedback General Ethics Attitude Survey
<b>Third Quarter</b>	<b>Education</b>	Key Legal Issue TBD Information Survey
	<b>Survey</b>	Course Feedback
<b>Fourth Quarter</b>	<b>Education</b>	Ethics Refresher TBD Second Key Legal Issue TBD
	<b>Survey</b>	Course feedback

**EXHIBIT M**  
**Governor's Code of Conduct**

## I. PURPOSE

### Code of conduct for the Governor

The Governor hereby adopts this Code to ensure public trust and confidence by providing a clear standard of conduct for the Governor.

## II. STATEMENT OF POLICY

The position of Governor exists to serve the public in a manner that fosters the respect, trust, and confidence of the public.

This Code of Conduct prohibits conflicts that are substantial and material or that may bring the Governor into disrepute. This Code is not intended to be applied in a vacuum. To that end, it attempts to balance public perception with the practical realities of the position of Governor. This Code attempts to set a high standard of ethical behavior and provide clearcut guidelines that accommodate the unique role of Governor as the head of State government, State's leading advocate, and head of a political party.

In any instance in which the Governor is not certain what the standard of conduct should be, he should consult the Advisory Ethics Panel, as established hereunder, as well as such members of his staff as he deems appropriate.

## III. CODE OF CONDUCT

### A. SOLICITATION AND RECEIPT OF GIFTS AND OTHER ITEMS

1. Except as otherwise provided herein or unless offered to the general public, the Governor shall not solicit, receive, or agree to receive, directly or indirectly, any compensation, reward, gift, favor, service, outside employment, offer of outside employment, preferential loans, services at preferential rates, discounts, gratuities, meals, lodging, travel expenses or anything of monetary value intended to influence him in the conduct of his public duties.
2. The Governor may accept gifts, favors, services, gratuities, meals, lodging or travel expenses from relatives or personal friends that are paid for with personal funds.
3. The Governor may accept gifts, favors, services, gratuities, meals, lodging or travel expenses that are paid for by a State Committee of a political party or similar entity.
4. The Governor may accept and personally retain a gift of minimal value tendered and received as a souvenir or mark of courtesy.
5. A tangible gift of greater than minimal value is deemed to have been accepted on behalf of the State of New Jersey and, on acceptance, shall become the property of the State of New Jersey. The Governor may retain such gifts during the period of his incumbency. At the conclusion of the Governor's final term, such gifts shall be delivered to the State Museum,

for appropriate disposition. Alternatively, the Governor may purchase any or all such gifts at fair market value.

6. For the purposes of this section, minimal value is deemed to be \$285, to be adjusted in accordance with the Federal Gift and Decorations Act.

#### B. ATTENDANCE AT EVENTS AND FUNCTIONS

1. The Governor may attend any function and accept food and beverages and related privileges if his attendance at the event furthers a public purpose.
2. The Governor may attend any event or function as official business if the Governor's attendance is paid for by the State.
3. The Governor may attend an event or function paid for by a State Committee or other similar entity.
4. The Governor may attend events or functions other than events or functions open to the general public. Examples of such events or functions include a conference, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fund-raiser, holiday party, social or business function.
5. The Governor may attend any event or function paid for with personal funds.

#### C. ADVOCACY / ENDORSEMENTS

The Governor is permitted to advocate the interests of public and private groups other than the State if doing so promotes a legitimate public purpose.

#### D. TRAVEL AND LODGING

1. State payment of travel, including actual transportation and related lodging and subsistence, that is reasonably related to a governmental purpose is permissible. Any private reimbursement of such expenses, unless otherwise exempted herein, shall be made to the State.
2. With the approval of the Ethics Liaison Officer, the Governor may accept reimbursement of actual expenses for travel, lodging and meals in connection with private speeches or published works on matters within the scope of the Governor's official duties, for which reimbursement is not sought or received from the State.
3. The Governor may accept travel and related expenses provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
4. For purposes of this section, a gift of travel does not include travel that is paid from campaign funds, or that is an in-kind political contribution.

#### E. DE FACTO HEAD OF POLITICAL PARTY

The Governor's status as de facto head of his political party is intertwined with his public responsibilities as Head of the State government. The Governor may act in a partisan political role, identify himself as Governor in that capacity, endorse political candidates, attend political events and raise and accept political contributions in accordance with governing campaign contribution laws.

#### F. CONFLICTS AND APPEARANCES OF CONFLICTS

1. The Governor shall not engage in conduct that constitutes a conflict of interest. A conflict of interest is defined as use by the Governor of the authority of his office or of any confidential information received through his holding public office for the private pecuniary benefit of himself, a member of his immediate family, or a business in which he or a member of his immediate family has a financial interest. For purposes of this section, a "financial interest" means (a) 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 (b) 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.). "Conflict" does not include:
  - a. an action having a de minimis economic impact, or
  - b. an action that affects to the same degree the Governor and members of the general public, or
  - c. a circumstance where the Governor's action may impact the Governor or members of his immediate family in a manner different in degree than members of the general public where the action reasonably cannot be avoided under the doctrine of necessity, and where the action is preceded by public disclosure of the interrelationship of the proposed action and the personal interest of the Governor or his immediate family. Examples of such actions include instances where by operation of state or federal law, only the Governor can act, such as approval or disapproval of legislative enactments, nominations or appointments of State officers, or declaration of emergencies.
2. The Governor shall not solicit or accept anything of monetary value, including a gift, loan, political contribution, reward, or promise of future employment based on any understanding of the Governor that the vote, official action, or judgment of the Governor would be influenced thereby.
3. The Governor shall not have any direct or indirect interest, financial or otherwise, or engage in any business or transaction or professional activity

that is in substantial conflict with the proper discharge of the Governor's duties in the public interest.

4. The Governor shall not act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment except as herein provided.
  
5. The Governor shall not either personally or through any person or entity undertake or execute any contract, agreement, sale or purchase valued at \$25.00 or more with any State agency, except as otherwise provided in the Conflicts of Interest Law and approved by the Advisory Ethics Panel.
6. The Governor shall not undertake any outside employment; or any 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.
7. The Governor shall not accept any personal gift, favor, service or other thing of value under circumstances from which the Governor knows or has reason to believe that such personal gift, favor, service or other thing of value is offered with the intent to unduly influence him in the performance of his public duties or under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the employee in the discharge of the employee's official duties.
8. The Governor shall not knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his official duties that he may be engaged in conduct inconsistent with this Code.

#### G. USE OF STATE INFORMATION, PROPERTY AND FUNDS, AND TITLE

1. Consistent with the other provisions of this Code, the Governor shall use the information, property and funds under his or her official control in accordance with prescribed procedures and not for personal gain or benefit.
2. Consistent with the other provisions of this Code, the Governor shall not use or disclose information not generally available to members of the public, which information he obtains during the course of his official duties, other than such use or disclosure connected with the Governor's official duties.
3. In recognition of the nature of the Office of Acting Governor, the Governor generally shall not be restricted in the use of his official title, except that the Governor shall not use his official title for personal financial gain.

#### H. SPECIAL CASINO, FINANCIAL DISCLOSURE AND RELATED CONSIDERATIONS



1. The Governor is subject to the statutory provisions concerning contemporaneous and post-State employment restrictions regarding casinos. The proscription is contained in N.J.S.A. 52:13D-17.2.
2. If the Legislature repeals or suspends N.J.S.A. 52:13D-17.2, in whole or in part, the companion sections of this Code shall, to the same extent, be deemed repealed or suspended and of no effect.
3. The Governor shall be subject to the Financial Disclosure requirements established by Executive Order.

#### IV. ADVISORY PANEL

The Governor may seek advice from the Advisory Ethics Panel created hereunder.