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POL §73

Public Officers Law §73

Business or Professional Activities by State Officers and Employees and Party Officers

§ 73. Business or professional activities by state officers and employees and party officers.

1. As used in this section:

(a) The term "compensation" shall mean any money, thing of value or financial benefit conferred in return for services rendered or to be rendered. With regard to matters undertaken by a firm, corporation or association, compensation shall mean net revenues, as defined in accordance with generally accepted accounting principles as defined by the state ethics commission or legislative ethics committee in relation to persons subject to their respective jurisdictions.

(b) The term "licensing" shall mean any state agency activity, other than before the division of corporations and state records in the department of state, respecting the grant, denial, renewal, revocation, enforcement, suspension, annulment, withdrawal, recall, cancellation or amendment of a license, permit or other form of permission conferring the right or privilege to engage in (i) a profession, trade, or occupation or (ii) any business or activity regulated by a regulatory agency as defined herein, which in the absence of such license, permit or other form of permission would be prohibited.

(c) The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

(d) The term "ministerial matter" shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

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(e) The term "regulatory agency" shall mean the banking department, insurance department, state liquor authority, department of agriculture and markets, department of education, department of environmental conservation, department of health, division of housing and community renewal, department of state, other than the division of corporations and state records, department of public service, the industrial board of appeals in the department of labor and the department of law, other than when the attorney general or his agents or employees are performing duties specified in section sixty-three of the executive law.

(f) The term "representative capacity" shall mean the presentation of the interests of a client or other person pursuant to an agreement, express or implied, for compensation for services.

(g) The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor, or the state university of New York or the city university of New York, including all their constituent units except community colleges of the state university of New York and the independent institutions operating statutory or contract colleges on behalf of the state.

(h) The term "statewide elected official" shall mean the governor, lieutenant governor, comptroller or attorney general.

(i) The term "state officer or employee" shall mean:

(i) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis;

(ii) officers and employees of statewide elected officials;

(iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and

(iv) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

(j) The term "city agency" shall mean a city, county, borough or other office, position, administration, department, division,

bureau, board, commission, authority, corporation or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include the board of education, the board of higher education, school boards, city and community colleges, community boards, the New York city transit authority, the New York city housing authority and the Triborough bridge and tunnel authority, but shall not include any court or corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

(k) The term "political party chairman" shall mean:

(i) the chairman of the state committee of a party elected as provided in section 2-112 of the election law and his or her successor in office;

(ii) the chairman of a county committee elected as provided in section 2-112 of the election law and his or her successor in office from a county having a population of three hundred thousand or more or who receives compensation or expenses, or both, during the calendar year aggregating thirty thousand dollars or more; and

(iii) that person (usually designated by the rules of a county committee as the "county leader" or "chairman of the executive committee") by whatever title designated, who pursuant to the rules of a county committee or in actual practice, possesses or performs any or all of the following duties or roles, provided that such person was elected from a county having a population of three hundred thousand or more or was a person who received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more:

(A) the principal political, executive and administrative officer of the county committee;

(B) the power of general management over the affairs of the county committee;

(C) the power to exercise the powers of the chairman of the county committee as provided for in the rules of the county committee;

(D) the power to preside at all meetings of the county executive committee, if such a committee is created by the rules of the county committee or exists de facto, or any other committee or subcommittee of the county committee vested by such rules with or having de facto the power of general management over the affairs of the county committee at times when the county committee is

not in actual session;

(E) the power to call a meeting of the county committee or of any committee or subcommittee vested with the rights, powers, duties or privileges of the county committee pursuant to the rules of the county committee, for the purpose of filling an office at a special election in accordance with section 6-114 of the election law, for the purpose of filling a vacancy in accordance with section 6-116 of such law; or

(F) the power to direct the treasurer of the party to expend funds of the county committee.

The terms "constituted committee" and "political committee", as used in this paragraph (k), shall have the same meanings as those contained in section 14-100 of the election law.

(l) A person has a "financial interest" in any entity if that person:

(i) owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange); or

(ii) serves as an officer, director or partner of that entity.

(m) The "relative" of any individual shall mean any person living in the same household as the individual and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant.

2. In addition to the prohibitions contained in subdivision seven hereof, no statewide elected official, state officer or employee, member of the legislature or legislative employee shall receive, or enter into any agreement express or implied for, compensation for services to be rendered in relation to any case, proceeding, application, or other matter before any state agency, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit; provided, however, that nothing in this subdivision shall be deemed to prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

3. (a) No statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state in relation to any case, proceeding, application or other matter before, or

the transaction of business by himself or another with, the court of claims.

(b) No state officer or employee who is required to file an annual statement of financial disclosure pursuant to the provisions of section seventy-three-a of this article, and is not otherwise subject to the provisions of this section, shall receive, directly or indirectly, or enter into any agreement express or implied, for any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state agency by which he is employed or affiliated in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims.

4. (a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(b) No political party chairman of a county wholly included in a city with a population of more than one million, or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any city agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised directly or indirectly, by a city agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(c) For purposes of this subdivision, the term "services" shall

not include employment as an employee.

5. No statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly or indirectly:

(a) solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

(b) solicit, accept or receive any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law unless under the circumstances it is not reasonable to infer that the gift was intended to influence him; or

(c) permit the solicitation, acceptance, or receipt of any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law to a third party including a charitable organization, on such official's designation or recommendation or on his or her behalf, under circumstances where it is reasonable to infer that the gift was intended to influence him.

5-a. (a) For the purpose of this subdivision only, the term "honorarium" shall mean any payment made in consideration for any speech given at a public or private conference, convention, meeting, social event, meal or like gathering.

(b) No statewide elected official or head of any civil department shall, directly or indirectly, solicit, accept or receive any honorarium while holding such elected office or appointed position.

(c) No member of the legislature or legislative employee shall, directly or indirectly, solicit, accept or receive any honorarium while holding such elected office or employment, other than honorarium paid in consideration for a speech given on a topic unrelated to the individual's current public employment or as earned income for personal services that are customarily provided in connection with the practice of a

bona fide business, trade or profession, such as teaching, practicing law, medicine or banking, unless the sole or predominant activity thereof is making speeches.

6. (a) Every legislative employee not subject to the provisions of section seventy-three-a of this chapter shall, on and after December fifteenth and before the following January fifteenth, in each year, file with the legislative ethics committee established by section eighty of the legislative law a financial disclosure statement of

(1) each financial interest, direct or indirect of himself, his spouse and his unemancipated children under the age of eighteen years in any activity which is subject to the jurisdiction of a regulatory agency or name of the entity in which the interest is had and whether such interest is over or under five thousand dollars in value.

(2) every office and directorship held by him in any corporation, firm or enterprise which is subject to the jurisdiction of a regulatory agency, including the name of such corporation, firm or enterprise.

(3) any other interest or relationship which he determines in his discretion might reasonably be expected to be particularly affected by legislative action or in the public interest should be disclosed.

(b) Copies of such statements shall be open for public inspection and copying.

(c) Any such legislative employee who knowingly and wilfully with intent to deceive makes a false statement or gives information which he knows to be false in any written statement required to be filed pursuant to this subdivision, shall be assessed a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty shall be made by the legislative ethics committee in accordance with the provisions of subdivision twelve of section eighty of the legislative law. For a violation of this subdivision, the committee may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor.

7. (a) No statewide elected official, or state officer or employee, other than in the proper discharge of official state or local governmental duties, or member of the legislature or legislative employee, or political party chairman shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another in relation to any case, proceeding, application or other matter

before a state agency where such appearance or rendition of services is in connection with:

- (i) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor, from, to or with any such agency;
- (ii) any proceeding relating to rate making;
- (iii) the adoption or repeal of any rule or regulation having the force and effect of law;
- (iv) the obtaining of grants of money or loans;
- (v) licensing; or
- (vi) any proceeding relating to a franchise provided for in the public service law.

(b) No political party chairman in a county wholly included in a city having a population of one million or more shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another in relation to any case, proceeding, application or other matter before any city agency where such appearance or rendition of services is in connection with:

- (i) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor, from, to or with any such agency;
- (ii) any proceeding relating to ratemaking;
- (iii) the adoption or repeal of any rule or regulation having the force and effect of law;
- (iv) the obtaining of grants of money or loans;
- (v) licensing. For purposes of this paragraph, the term "licensing" shall mean any city agency activity respecting the grant, denial, renewal, revocation, enforcement, suspension, annulment, withdrawal, recall, cancellation or amendment of a license, permit or other form of permission conferring the right or privilege to engage in (i) a profession, trade, or occupation or (ii) any business or activity regulated by a regulatory agency of a city agency which in the absence of such license, permit or other form of permission would be prohibited; and
- (vi) any proceeding relating to a franchise.

(c) Nothing contained in this subdivision shall prohibit a statewide elected official, or a state officer or employee, unless otherwise prohibited, or a member of the legislature or

legislative employee, or political party chairman, from appearing before a state agency in a representative capacity if such appearance in a representative capacity is in connection with a ministerial matter.

(d) Nothing contained in this subdivision shall prohibit a member of the legislature, or a legislative employee on behalf of such member, from participating in or advocating any position in any matter in an official or legislative capacity, including, but not limited to, acting as a public advocate whether or not on behalf of a constituent. Nothing in this paragraph shall be construed to limit the application of the provisions of section seventy-seven of this chapter.

(e) Nothing contained in this subdivision shall prohibit a state officer or employee from appearing before a state agency in a representative capacity on behalf of an employee organization in any matter where such appearance is duly authorized by an employee organization.

(f) Nothing contained in this subdivision shall prohibit a political party chairman from participating in or advocating any matter in an official capacity.

(g) Nothing contained in this subdivision shall prohibit internal research or discussion of a matter, provided, however, that the time is not charged to the client and the person does not share in the net revenues generated or produced by the matter.

(h) Nothing contained in this subdivision shall prohibit a state officer or employee, unless otherwise prohibited, from appearing or rendering services in relation to a case, proceeding, application or transaction before a state agency, other than the agency in which the officer or employee is employed, when such appearance or rendition of services is made while carrying out official duties as an elected or appointed official, or employee of a local government or one of its agencies.

8. (a) (i) No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before such agency.

(ii) No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such

former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration.

(iii) No person who has served as a member of the legislature shall within a period of two years after the termination of such service receive compensation for any services on behalf of any person, firm, corporation or association to promote or oppose, directly or indirectly, the passage of bills or resolutions by either house of the legislature. No legislative employee shall within a period of two years after the termination of such service receive compensation for any services on behalf of any person, firm, corporation or association to appear, practice or directly communicate before either house of the legislature to promote or oppose the passage of bills or resolutions by either house of the legislature.

(iv) No person who has served as an officer or employee in the executive chamber of the governor shall within a period of two years after termination of such service appear or practice before any state agency.

(b) (i) The provisions of subparagraph (i) of paragraph (a) of this subdivision shall not apply to any state officer or employee whose employment was terminated on or after January first, nineteen hundred ninety-five and before April first, nineteen hundred ninety-nine or on or after January first, two-thousand nine and before April first, two-thousand eleven because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the state work force. On or before the date of such termination of employment, the state agency shall provide to the terminated employee a written certification that the employee has been terminated because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the state work force, and that such employee is covered by the provisions of this paragraph. The written certification shall also contain a notice describing the rights and responsibilities of the employee pursuant to the provisions of this section. The certification and notice shall contain the information and shall be in the form set forth below:

CERTIFICATION AND NOTICE

TO: Employee's Name: _____
State agency: _____

Date of Termination:

I, (name and title) of (state agency), hereby certify that your termination from State service is because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the State work force. Therefore, you are covered by the provisions of paragraph (b) of subdivision eight of section seventy-three of the Public Officers Law.

You were designated as a policy maker: YES ____ NO ____

(TITLE)

TO THE EMPLOYEE:

This certification affects your right to engage in certain activities after you leave state service.

Ordinarily, employees who leave State service may not, for two years, appear or practice before their former agency or receive compensation for rendering services on a matter before their former agency. However, because of this certification, you may be exempt from this restriction.

If you were not designated as a Policymaker by your agency, you are automatically exempt. You may, upon leaving State service, immediately appear, practice or receive compensation for services rendered before your former agency.

If you were designated as a Policymaker by your agency, you are eligible to apply for an exemption to the Commission on Public Integrity at 540 Broadway, Albany, New York 12207.

Even if you are or become exempt from the two year bar, the lifetime bar of the revolving door statute will continue to apply to you. You may not appear, practice, communicate or otherwise render services before any State agency in relation to any case, proceeding, application or transaction with respect to which you were directly concerned and in which you personally participated during your State service, or which was under your active consideration.

If you have any questions about the application of the post-employment restrictions to your circumstances, you may contact the Commission on Public Integrity at (518) 408-3976 or 1-800-87ETHIC (1-800-873-8442).

(ii) The provisions of subparagraph (i) of this paragraph shall not apply to any such officer or employee who at the time of or prior to such termination had served in a policymaking position as determined by the appointing authority, which determination had been filed with the state ethics commission or the Commission on Public Integrity, provided that such officer or employee may so appear or

practice or receive such compensation with the prior approval of the state ethics commission or the Commission on Public Integrity. In determining whether to grant such approval the state ethics commission or the Commission on Public Integrity shall consider:

A. whether the employee's prior job duties involved substantial decision-making authority over policies, rule or contracts;

B. the nature of the duties to be performed by the employee for the prospective employer;

C. whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee;

D. whether the prospective employment may be beneficial to the state or the public; and

E. the extent of economic hardship to the employee if the application is denied.

(c) The provisions of paragraph (b) of this subdivision shall not apply to employees whose employment has been discontinued as a result of retirement or to employees who, prior to termination, have declined to exercise a right to another position with a state agency unless such position would require the employee to travel more than thirty-five miles in each direction to the new position or accept a reduction in base salary of more than ten per centum.

(d) Nothing contained in this subdivision shall prohibit any state agency from adopting rules concerning practice before it by former officers or employees more restrictive than the requirements of this subdivision.

(e) This subdivision shall not apply to any appearance, practice, communication or rendition of services before any state agency, or either house of the legislature, or to the receipt of compensation for any such services, rendered by a former state officer or employee or former member of the legislature or legislative employee, which is made while carrying out official duties as an elected official or employee of a federal, state or local government or one of its agencies.

(f) Nothing in this subdivision shall be deemed to prevent a former state officer or employee who was employed on a temporary basis to perform routine clerical services, mail services, data entry services or other similar ministerial tasks, from subsequently being employed by a person, firm,

corporation or association under contract to a state agency to perform such routine clerical services, mail services, data entry services or other similar ministerial tasks; provided however, this paragraph shall in no event apply to any such state officer or employee who was required to file an annual statement of financial disclosure pursuant to section seventy-three-a of this article.

(g) Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency when the agency head certifies in writing to the state ethics commission that the services of such former officer or employee are required in connection with the agency's efforts to address the state's year 2000 compliance problem.

(h) Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency when the agency head certifies in writing to the state ethics commission that the services of such former officer or employee are required in connection with the agency's response to a disaster emergency declared by the governor pursuant to section twenty-eight of the executive law.

8-a. The provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section shall not apply to any such former state officer or employee engaged in any of the specific permitted activities defined in this subdivision that are related to any civil action or proceeding in any state or federal court, provided that the attorney general has certified in writing to the state ethics commission, with a copy to such former state officer or employee, that the services are rendered on behalf of the state, a state agency, state officer or employee, or other person or entity represented by the attorney general, and that such former state officer or employee has expertise, knowledge or experience which is unique or outstanding in a field or in a particular matter or which would otherwise be generally unavailable at a comparable cost to the state, a state agency, state officer or employee, or other person or entity represented by the attorney general in such civil action or proceeding. In those instances where a state agency is not represented by the attorney general in a civil action or proceeding in state or federal court, a former state officer or employee may engage in permitted activities provided that the general counsel of the state agency, after consultation with the state ethics commission, provides to the state ethics commission a written

certification which meets the requirements of this subdivision. For purposes of this subdivision the term "permitted activities" shall mean generally any activity performed at the request of the attorney general or the attorney general's designee, or in cases where the state agency is not represented by the attorney general, the general counsel of such state agency, including without limitation:

(a) preparing or giving testimony or executing one or more affidavits;

(b) gathering, reviewing or analyzing information, including documentary or oral information concerning facts or opinions, attending depositions or participating in document review or discovery;

(c) performing investigations, examinations, inspections or tests of persons, documents or things;

(d) performing audits, appraisals, compilations or computations, or reporting about them;

(e) identifying information to be sought concerning facts or opinions;

or

(f) otherwise assisting in the preparation for, or conduct of, such litigation.

Nothing in this subdivision shall apply to the provision of legal representation by any former state officer or employee.

* 8-b. Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency if, prior to engaging in such service, the agency head certifies in writing to the state ethics commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the needs of the agency and is otherwise unavailable at a comparable cost. Where approval of the contract is required under section one hundred twelve of the state finance law, the comptroller shall review and consider the reasons for such certification. The state ethics commission must review and approve all certifications made pursuant to this subdivision.

* NB There are 2 sub 8-b's

* 8-b. Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section, a former state officer or employee who, prior to his or her

separation from state service, was employed as a health care professional and, in conjunction with his or her state duties, provided treatment and/or medical services to individuals residing in or served by a state-operated facility is not barred from rendering services to such individuals in their care prior to leaving state service, at the state-operated facility which employed the former state officer or employee.

* NB There are 2 sub 8-b's

9. No party officer while serving as such shall be eligible to serve as a judge of any court of record, attorney-general or deputy or assistant attorney-general or solicitor general, district attorney or assistant district attorney. As used in this subdivision, the term "party officer" shall mean a member of a national committee, an officer or member of a state committee or a county chairman of any political party.

10. Nothing contained in this section, the judiciary law, the education law or any other law or disciplinary rule shall be construed or applied to prohibit any firm, association or corporation, in which any present or former statewide elected official, state officer or employee, or political party chairman, member of the legislature or legislative employee is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with a state agency, or a city agency with respect to a political party chairman in a county wholly included in a city with a population of more than one million, otherwise proscribed by this section, the judiciary law, the education law or any other law or disciplinary rule with respect to such official, member of the legislature or officer or employee, or political party chairman, where such statewide elected official, state officer or employee, member of the legislature or legislative employee, or political party chairman does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the state ethics commission or by the legislative ethics committee in relation to persons subject to their respective jurisdictions, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined; nor shall anything contained in this section, the judiciary law, the education law or any other law or disciplinary rule be construed to prohibit any firm, association or corporation in which any present or former statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this chapter is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in

relation to any matter before, or transacting business with, the court of claims, where such statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this chapter does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the state ethics commission or by the legislative ethics committee in relation to persons subject to their respective jurisdictions, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined.

11. Notwithstanding any provision of the judiciary law, the education law or any other law or disciplinary rule to the contrary:

(a) Conduct authorized pursuant to subdivision eight of this section by a person who has served as a member of the legislature or as a legislative employee shall not constitute professional misconduct or grounds for disciplinary action of any kind;

(b) No member of the legislature or former member of the legislature shall be prohibited from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with, any state agency solely by reason of any vote or other action by such member or former member in respect to the confirmation or election of any member, commissioner, director or other person affiliated with such state agency, but nothing in this paragraph shall limit the prohibition contained in subdivision eight of this section;

(c) The appearance, practice, communication or rendition of services in relation to any matter before, or transaction of business with a state agency, or with the court of claims, or the promotion or opposition to the passage of bills or resolutions by either house of the legislature, by a member, associate, retired member, of counsel or shareholder of a firm, association or corporation, in accordance with subdivision ten of this section, is hereby authorized and shall not constitute professional misconduct or grounds for disciplinary action of any kind solely by reason of the professional relationship between the statewide elected official, state officer or employee, political party chairman, member of the legislature, or legislative employee and any firm, association, corporation or any member, associate, retired member, of counsel, or shareholder thereof, or by reason of the appearance created by any such professional relationship.

12. A statewide elected official, state officer or employee, or a

member of the legislature or legislative employee, or political party chairman, who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation which is appearing or rendering services in connection with any case, proceeding, application or other matter listed in paragraph (a) or (b) of subdivision seven of this section shall not orally communicate, with or without compensation, as to the merits of such cause with an officer or an employee of the agency concerned with the matter.

13. For the purposes of this section, a statewide elected official or state officer or employee or member of the legislature or legislative employee or political party chairman who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation shall not be deemed to have made an appearance under the provisions of this section solely by the submission to a state agency or city agency of any printed material or document bearing his or her name, but unsigned by him or her, such as by limited illustrations the name of the firm, association or corporation or the letterhead of any stationery, which pro forma serves only as an indication that he or she is such a member, associate, retired member, of counsel to, or shareholder.

14. (a) No statewide elected official, state officer or employee, member of the legislature or legislative employee may participate in any decision to hire, promote, discipline or discharge a relative for any compensated position at, for or within any state agency, public authority or the legislature.

(b) This paragraph shall not apply to (i) the hiring of a relative by a legislator with a physical impairment, for the sole purpose of assisting with that impairment, as necessary and otherwise permitted by law; (ii) the temporary hiring of legislative pages, interns and messengers; or (iii) responding to inquiries with respect to prospective hires related to an individual covered by this paragraph.

15. No statewide elected official, state officer or employee, member of the legislature or legislative employee shall:

(a) participate in any state contracting decision involving the payment of more than one thousand dollars to that individual, any relative of that individual, or any entity in which that individual or any relative has a financial interest; or

(b) participate in any decision to invest public funds in any security of any entity in which that individual or any relative of that individual has a financial interest, is an underwriter, or receives any brokerage, origination or servicing fees.

16. (a) No statewide elected official, state officer or employee involved in the awarding of state grants or contracts may ask

a current or prospective grantee or contractor, or any officer, director or employee thereof, to disclose: (i) the party affiliation of such grantee or contractor, or any officer, director or employee thereof; (ii) whether such grantee or contractor, or any officer, director or employee thereof, has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether such grantee or contractor, or any officer, director or employee thereof, cast a vote for or against any elected official, candidate or political party.

(b) No statewide elected official or state officer or employee may award or decline to award any state grant or contract, or recommend, promise or threaten to do so, in whole or in part, because of a current or prospective grantee's or contractor's refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

17. (a) No statewide elected official, or state officer or employee may during the consideration of an employment decision ask any applicant for public employment to disclose: (i) the political party affiliation of the applicant; (ii) whether the applicant has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether the applicant cast a vote for or against any elected official, candidate or political party. The provisions of this paragraph shall not apply where (1) such inquiry is necessary for the proper application of any state law or regulation; or (2) such inquiry is consistent with publicly disclosed policies or practices of any state agency or public authority, whose purpose is to ensure the representation of more than one political party on any multi-member body.

(b) No statewide elected official or state officer or employee may decline to hire or promote, discharge, discipline, or in any manner change the official rank or compensation of any state official or employee, or applicant for employment, or promise or threaten to do so, based upon a refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or for giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

(c) No state officer or employee shall, directly or indirectly, use his or her official authority to compel or induce any other state officer or employee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.

18. In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates

the provisions of subdivisions two through five, seven, eight, twelve or fourteen through seventeen of this section shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received in connection with such violation. Assessment of a civil penalty hereunder shall be made by the state oversight body with jurisdiction over such person. A state oversight body acting pursuant to its jurisdiction, may, in lieu of a civil penalty, with respect to a violation of subdivisions two through five, seven or eight of this section, refer a violation of any such subdivision to the appropriate prosecutor and upon such conviction such violation shall be punishable as a class A misdemeanor.

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POL 73A

§ 73-a. Financial disclosure. 1. As used in this section:

(a) The term "statewide elected official" shall mean the governor, lieutenant governor, comptroller, or attorney general.

(b) The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor, or the state university of New York or the city university of New York, including all their constituent units except community colleges of the state university of New York and the independent institutions operating statutory or contract colleges on behalf of the state.

(c) The term "state officer or employee" shall mean:

(i) heads of state departments and their deputies and assistants;

(ii) officers and employees of statewide elected officials, officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies, who receive annual compensation in excess of the filing rate established by paragraph (l) of this subdivision or who hold policy-making positions, as annually determined by the appointing authority and set forth in a written instrument which shall be filed with the state ethics commission established by section ninety-four of the executive law during the month of February, provided, however, that the appointing authority shall amend such written instrument after such date within thirty days after the undertaking of policy-making responsibilities by a new employee or any other employee whose name did not appear on the most recent written instrument; and

(iii) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, and employees of such authorities, corporations

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and commissions who receive annual compensation in excess of the filing rate established by paragraph (l) of this subdivision or who hold policy-making positions, as determined annually by the appointing authority and set forth in a written instrument which shall be filed with the state ethics commission established by section ninety-four of the executive law during the month of February, provided, however, that the appointing authority shall amend such written instrument after such date within thirty days after the undertaking of policy-making responsibilities by a new employee or any other employee whose name did not appear on the most recent written instrument.

(d) The term "legislative employee" shall mean any officer or employee of the legislature who receives annual compensation in excess of the filing rate established by paragraph (l) below or who is determined to hold a policy-making position by the appointing authority as set forth in a written instrument which shall be filed with the legislative ethics committee established by section eighty of the legislative law.

(e) The term "spouse" shall mean the husband or wife of the reporting individual unless living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation or unless separated pursuant to: (i) a judicial order, decree or judgment, or (ii) a legally binding separation agreement.

(f) The term "relative" shall mean such individual's spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the reporting individual or of the reporting individual's spouse.

(g) The term "unemancipated child" shall mean any son, daughter, stepson or stepdaughter who is under age eighteen, unmarried and living in the household of the reporting individual.

(h) The term "political party chairman" shall have the same meaning as ascribed to such term by subdivision one of section seventy-three of this chapter.

(i) The term "local agency" shall mean:

(i) any county, city, town, village, school district or district corporation, or any agency, department, division, board, commission or bureau thereof; and

(ii) any public benefit corporation or public authority not included in the definition of a state agency.

(j) The term "regulatory agency" shall have the same meaning as ascribed to such term by subdivision one of section

seventy-three of this chapter.

(k) The term "ministerial matter" shall have the same meaning as ascribed to such term by subdivision one of section seventy-three of this chapter.

(l) The term "filing rate" shall mean the job rate of SG-24 as set forth in paragraph a of subdivision one of section one hundred thirty of the civil service law as of April first of the year in which an annual financial disclosure statement shall be filed.

2. (a) Every statewide elected official, state officer or employee, member of the legislature, legislative employee and political party chairman and every candidate for statewide elected office or for member of the legislature shall file an annual statement of financial disclosure containing the information and in the form set forth in subdivision three hereof. Such statement shall be filed on or before the fifteenth day of May with respect to the preceding calendar year, except that:

(i) a person who is subject to the reporting requirements of this subdivision and who timely filed with the internal revenue service an application for automatic extension of time in which to file his or her individual income tax return for the immediately preceding calendar or fiscal year shall be required to file such financial disclosure statement on or before May fifteenth but may, without being subjected to any civil penalty on account of a deficient statement, indicate with respect to any item of the disclosure statement that information with respect thereto is lacking but will be supplied in a supplementary statement of financial disclosure, which shall be filed on or before the seventh day after the expiration of the period of such automatic extension of time within which to file such individual income tax return, provided that failure to file or to timely file such supplementary statement of financial disclosure or the filing of an incomplete or deficient supplementary statement of financial disclosure shall be subject to the notice and penalty provisions of this section respecting annual statements of financial disclosure as if such supplementary statement were an annual statement;

(ii) a person who is required to file an annual financial disclosure statement with the state ethics commission or with the legislative ethics committee, and who is granted an additional period of time within which to file such statement due to justifiable cause or undue hardship, in accordance with required rules and regulations on the subject adopted pursuant to paragraph c of subdivision nine of section ninety-four of the executive law or pursuant to paragraph c of subdivision eight of section eighty of the legislative law, shall file such statement within the additional period of time

granted;

(iii) candidates for statewide office who receive a party designation for nomination by a state committee pursuant to section 6-104 of the election law shall file such statement within seven days after the date of the meeting at which they are so designated;

(iv) candidates for statewide office who receive twenty-five percent or more of the vote cast at the meeting of the state committee held pursuant to section 6-104 of the election law and who demand to have their names placed on the primary ballot and who do not withdraw within fourteen days after such meeting shall file such statement within seven days after the last day to withdraw their names in accordance with the provisions of such section of the election law;

(v) candidates for statewide office and candidates for member of the legislature who file party designating petitions for nomination at a primary election shall file such statement within seven days after the last day allowed by law for the filing of party designating petitions naming them as candidates for the next succeeding primary election;

(vi) candidates for independent nomination who have not been designated by a party to receive a nomination shall file such statement within seven days after the last day allowed by law for the filing of independent nominating petitions naming them as candidates in the next succeeding general or special election;

(vii) candidates who receive the nomination of a party for a special election shall file such statement within seven days after the date of the meeting of the party committee at which they are nominated; and

(viii) a candidate substituted for another candidate, who fills a vacancy in a party designation or in an independent nomination, caused by declination, shall file such statement within seven days after the last day allowed by law to file a certificate to fill a vacancy in such party designation or independent nomination.

(b) As used in this subdivision, the terms "party", "committee" (when used in conjunction with the term "party"), "designation", "primary", "primary election", "nomination", "independent nomination" and "ballot" shall have the same meanings as those contained in section 1-104 of the election law.

(c) If the reporting individual is a senator or member of assembly, candidate for the senate or member of assembly or a legislative employee, such statement shall be filed with the legislative ethics committee established by section eighty

of the legislative law. If the reporting individual is a statewide elected official, candidate for statewide elected office, a state officer or employee or a political party chairman, such statement shall be filed with the state ethics commission established by section ninety-four of the executive law.

(d) The legislative ethics committee and the state ethics commission shall obtain from the state board of elections a list of all candidates for statewide office and for member of the legislature, and from such list, shall determine and publish a list of those candidates who have not, within ten days after the required date for filing such statement, filed the statement required by this subdivision.

(e) Any person required to file such statement who commences employment after May fifteenth of any year and political party chairman shall file such statement within thirty days after commencing employment or of taking the position of political party chairman, as the case may be.

(f) A person who may otherwise be required to file more than one annual financial disclosure statement with both the state ethics commission and the legislative ethics committee in any one calendar year may satisfy such requirement by filing one such statement with either body and by notifying the other body of such compliance.

(g) A person who is employed in more than one employment capacity for one or more employers certain of whose officers and employees are subject to filing a financial disclosure statement with the same ethics commission or ethics committee, as the case may be, and who receives distinctly separate payments of compensation for such employment shall be subject to the filing requirements of this section if the aggregate annual compensation for all such employment capacities is in excess of the filing rate notwithstanding that such person would not otherwise be required to file with respect to any one particular employment capacity. A person not otherwise required to file a financial disclosure statement hereunder who is employed by an employer certain of whose officers or employees are subject to filing a financial disclosure statement with the state ethics commission and who is also employed by an employer certain of whose officers or employees are subject to filing a financial disclosure statement with the legislative ethics committee shall not be subject to filing such statement with either such commission or such committee on the basis that his aggregate annual compensation from all such employers is in excess of the filing rate.

(h) A statewide elected official or member of the legislature, who is simultaneously a candidate for statewide elected office or member of the legislature, shall satisfy the filing deadline

requirements of this subdivision by complying only with the deadline applicable to one who holds a statewide elected office or who holds the office of member of the legislature.

(i) A candidate whose name will appear on both a party designating petition and on an independent nominating petition for the same office or who will be listed on the election ballot for the same office more than once shall satisfy the filing deadline requirements of this subdivision by complying with the earliest applicable deadline only.

(j) A member of the legislature who is elected to such office at a special election prior to May fifteenth in any year shall satisfy the filing requirements of this subdivision in such year by complying with the earliest applicable deadline only.

3. The annual statement of financial disclosure shall contain the information and shall be in the form set forth hereinbelow:

ANNUAL STATEMENT OF FINANCIAL DISCLOSURE - (For calendar year _____)

1. Name

2. (a) Title of Position

(b) Department, Agency or other Governmental Entity _____

(c) Address of Present Office

(d) Office Telephone Number

3. (a) Marital Status

_____. If married, please give spouse's

full name including maiden name where applicable.

(b) List the names of all unemancipated children.

Answer each of the following questions completely, with respect to calendar year _____, unless another period or date is otherwise specified. If additional space is needed, attach additional pages.

Whenever a "value" or "amount" is required to be reported herein, such value or amount shall be reported as being within one of the following Categories: Category A - under \$5,000; Category B - \$5,000 to under \$20,000; Category C - \$20,000 to under \$60,000; Category D - \$60,000 to under \$100,000; Category E - \$100,000 to under \$250,000; and Category F - \$250,000 or over. A reporting individual shall indicate the Category by letter only.

Whenever "income" is required to be reported herein, the term "income" shall mean the aggregate net income before taxes from the source identified.

The term "calendar year" shall mean the year ending the December 31st preceding the date of filing of the annual statement.

4. (a) List any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, held by the reporting individual with any firm, corporation, association, partnership, or other organization other than the State of New York.

Include compensated honorary positions; do NOT list membership or uncompensated honorary positions. If the listed entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

| | |
|--------------|-------|
| State or | |
| Position | |
| Organization | Local |
| Agency | |

5. (a) List the name, address and description of any occupation, employment (other than the employment listed under Item 2 above), trade, business or profession engaged in by the reporting individual. If such activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

| State or Local Description | Position of Organization Agency | Name & Address |
|----------------------------------|---------------------------------------|----------------|
| | | |
| | | |
| | | |
| | | |

(b) If the spouse or unemancipated child of the reporting individual was engaged in any occupation, employment, trade, business or profession which activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name, address and description of such occupation, employment, trade, business or profession and the name of any such agency.

| State or Local Position Description | Name & Address of Organization Agency |
|--|---|
| | |
| | |
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| | |

6. List any interest, in EXCESS of \$1,000, held by the reporting individual, such individual's spouse or unemancipated child, or partnership of which any such person is a member, or corporation, 10% or more of the stock of which is owned or controlled by any such person, whether vested or contingent, in any contract made or executed by a state or local agency and include the name of the entity which holds such interest and the relationship of the reporting individual or such individual's spouse or such child to such entity and the interest in such contract. Do NOT include bonds and notes. Do NOT list any interest in any such contract on which final payment has been made and all obligations under the contract except for guarantees and warranties have been performed, provided, however, that such an interest must be listed if there has been an ongoing dispute during the calendar year for which this statement is filed with respect to any such guarantees or warranties. Do NOT list any interest in a contract made or executed by a local agency after public notice and pursuant to a process for competitive bidding or a process for competitive requests for proposals.

department of education, give a general description of the principal subject areas of matters undertaken by such individual. Additionally, if such an individual practices with a firm or corporation and is a partner or shareholder of the firm or corporation, give a general description of principal subject areas of matters undertaken by such firm or corporation. Do not list the name of the individual clients, customers or patients.

(b) List the name, principal address and general description or the nature of the business activity of any entity in which the reporting individual or such individual's spouse had an investment in excess of \$1,000 excluding investments in securities and interests in real property.

9. List each source of gifts, EXCLUDING campaign contributions, in EXCESS of \$1,000, received during the reporting period for which this statement is filed by the reporting individual or such individual's spouse or unemancipated child from the same

donor, EXCLUDING gifts from a relative. INCLUDE the name and address of the donor. The term "gifts" does not include reimbursements, which term is defined in item 10. Indicate the value and nature of each such gift.

| Category | Spouse or Name of | Value of | Address |
|----------------|-------------------|----------|---------|
| Nature of Gift | Child Donor | Gift | |
| Self, | | | |
| | | | |
| | | | |
| | | | |
| | | | |

10. Identify and briefly describe the source of any reimbursements for expenditures, EXCLUDING campaign expenditures and expenditures in connection with official duties reimbursed by the state, in EXCESS of \$1,000 from each such source. For purposes of this item, the term "reimbursements" shall mean any travel-related expenses provided by nongovernmental sources and for activities related to the reporting individual's official duties such as, speaking engagements, conferences, or factfinding events. The term "reimbursements" does NOT include gifts reported under item 9.

| Source Description |
|--------------------|
| |
| |
| |

11. List the identity and value, if reasonably ascertainable, of each interest in a trust, estate or other beneficial interest, including retirement plans other than retirement plans of the state of New

York or the city of New York, and deferred compensation plans (e.g., 401, 403(b), 457, etc.) established in accordance with the internal

revenue code, in which the REPORTING INDIVIDUAL held a beneficial

interest in EXCESS of \$1,000 at any time during the preceding year.

Do NOT report interests in a trust, estate or other beneficial interest established by or for, or the estate of, a relative.

Category

Identity
of Value*

* The value of such interest shall be reported only if reasonably ascertainable.

12. (a) Describe the terms of, and the parties to, any contract, promise, or other agreement between the reporting individual and any person, firm, or corporation with respect to the employment of such individual after leaving office or position (other than a leave of absence).

(b) Describe the parties to and the terms of any agreement providing for continuation of payments or benefits to the REPORTING INDIVIDUAL in EXCESS of \$1,000 from a prior employer OTHER THAN the State. (This includes interests in or contributions to a pension fund, profit-sharing plan, or life or health insurance; buy-out agreements; severance payments; etc.)

13. List below the nature and amount of any income in EXCESS of \$1,000 from EACH SOURCE for the reporting individual and such individual's spouse for the taxable year last occurring prior to the date of filing. Nature of income includes, but is not limited to, all income (other than that received from the employment listed under Item 2 above) from compensated employment whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and

bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in the case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

| | |
|-------------------|-----------|
| Self/ Category | |
| Spouse | Source |
| Nature | of Amount |

| | |
|--|--|
| | |
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| | |

14. List the sources of any deferred income (not retirement income) in EXCESS of \$1,000 from each source to be paid to the reporting individual following the close of the calendar year for which this disclosure statement is filed, other than deferred compensation reported in item 11 hereinabove. Deferred income derived from the practice of a profession shall be listed in the aggregate and shall identify as the source, the name of the firm, corporation, partnership or association through which the income was derived, but shall not identify individual clients.

Category

Source
of Amount

15. List each assignment of income in EXCESS of \$1,000, and each transfer other than to a relative during the reporting period for which this statement is filed for less than fair consideration of an interest in a trust, estate or other beneficial interest, securities or real property, by the reporting individual, in excess of \$1,000, which would otherwise be required to be reported herein and is not or has not been so reported.

| Item Assigned Assigned or or Transferred Transferred to | Category of Value |
|--|----------------------|
|--|----------------------|

16. List below the type and market value of securities held by the reporting individual or such individual's spouse from each issuing entity in EXCESS of \$1,000 at the close of the taxable year last occurring prior to the date of filing, including the name of the issuing entity exclusive of

securities held by the reporting individual issued by a professional corporation. Whenever an interest in securities exists through a beneficial interest in a trust, the securities held in such trust shall be listed ONLY IF the reporting individual has knowledge thereof except where the reporting individual or the reporting individual's spouse has transferred assets to such trust for his or her benefit in which event such securities shall be listed unless they are not ascertainable by the reporting individual because the trustee is under an obligation or has been instructed in writing not to disclose the contents of the trust to the reporting individual. Securities of which the reporting individual or the reporting individual's spouse is the owner of record but in which such individual or the reporting individual's spouse has no beneficial interest shall not be listed. Indicate percentage of ownership ONLY if the reporting person or the reporting person's spouse holds more than five percent (5%) of the stock of a corporation in which the stock is publicly traded or more than ten percent (10%) of the stock of a corporation in which the stock is NOT publicly traded. Also list securities owned for investment purposes by a corporation more than fifty percent (50%) of the stock of which is owned or controlled by the reporting individual or such individual's spouse. For the purpose of this item the term "securities" shall mean mutual funds, bonds, mortgages, notes, obligations, warrants and stocks of any class, investment interests in limited or general partnerships and certificates of deposits (CDs) and such other evidences of indebtedness and certificates of interest as are usually referred to as securities. The market value for such securities shall be reported only if reasonably ascertainable and shall not be reported if the security is an interest in a general partnership that was listed in item 8 (a) or if the security is corporate stock, NOT publicly traded, in a trade or

business of a reporting individual or
a reporting individual's spouse.

Percentage

of corporate

stock owned

or controlled

(if more than

5% of pub-

licly traded

stock, or

more than

10% if stock

Self/
not publicly

Spouse
traded, is held)

Category of

Market Value

as of the close

of the

taxable year

last occurring

prior to

Issuing Type of
the filing of

Entity Security
this statement

17. List below the location, size, general nature, acquisition date, market value and percentage of ownership of any real property in which any vested or contingent interest in EXCESS of \$1,000 is held by the reporting individual or the reporting individual's spouse.

Also list real property owned for investment purposes by a corporation more than fifty percent 50% of the stock of which is owned or controlled by the reporting individual or such individual's

spouse. Do NOT list any real property which is the primary or secondary personal residence of the reporting individual or the reporting individual's spouse,

except where there is a co-owner who is other than a relative.

Category
 Self/
 Percentage of
 Spouse/
 General Acquisition of Market
 Corporation Location Size
 Nature Date Ownership Value

18. List below all notes and accounts receivable, other than from goods or services sold, held by the reporting individual at the close of the taxable year last occurring prior to the date of filing and other debts owed to such individual at the close of the taxable year last occurring prior to the date of filing, in EXCESS of \$1,000, including the name of the debtor, type of obligation, date due and the nature of the collateral securing payment of each, if any, excluding securities reported in item 16 hereinabove. Debts, notes and accounts receivable owed to the individual by a relative shall not be reported.

Obligation, Category
 Date
 Due, and Nature of
 Name of Debtor of
 Collateral, if any Amount

19. List below all liabilities of the reporting individual and such individual's spouse, in EXCESS of \$5,000 as of the date of filing of this statement, other than liabilities to a relative. Do NOT list

liabilities incurred by, or guarantees made by, the reporting individual or such individual's spouse or by any proprietorship, partnership or corporation in which the reporting individual or such individual's spouse has an interest, when incurred or made in the ordinary course of the trade, business or professional practice of the reporting individual or such individual's spouse. Include the name of the creditor and any collateral pledged by such individual to secure payment of any such liability. A reporting individual shall not list any obligation to pay maintenance in connection with a matrimonial action, alimony or child support payments. Any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances shall be excluded. If any such reportable liability has been guaranteed by any third person, list the liability and name the guarantor.

| | | |
|--------------------|--|---------|
| Category | | |
| Name of Creditor | | Type of |
| Liability | | of |
| or Guarantor | | and |
| Collateral, if any | | Amount |

The requirements of law relating to the reporting of financial interests are in the public interest and no adverse inference of unethical or illegal conduct or behavior will be drawn merely from compliance with these requirements.

(Signature of Reporting Individual) Date (month/day/year)

4. A reporting individual who knowingly and wilfully fails to file an annual statement of financial disclosure or who knowingly and wilfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty hereunder shall be made by the state ethics commission or by the legislative ethics committee, as the case may be, with respect to persons subject to their respective jurisdictions. The state ethics commission acting pursuant to subdivision thirteen of section ninety-four of the executive law or the legislative ethics committee acting pursuant to subdivision twelve of section eighty of the legislative law, as the case may be, may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor. A civil penalty for false filing may not be imposed hereunder in the event a category of "value" or "amount" reported hereunder is incorrect unless such reported information is falsely understated. Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement, except that the appointing authority may impose disciplinary action as otherwise provided by law. The state ethics commission and the legislative ethics committee shall each be deemed to be an agency within the meaning of article three of the state administrative procedure act and shall adopt rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of the civil penalties herein authorized. Such rules, which shall not be subject to the approval

requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in such article three but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty shall be final unless modified, suspended or vacated within thirty days of imposition and upon becoming final shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the state ethics commission or legislative ethics committee, pursuant to article seventy-eight of the civil practice law and rules.

5. Nothing contained in this section shall be construed as precluding any public authority or public benefit corporation from exercising any authority or power now or hereafter existing to require any of its members, directors, officers or employees to file financial disclosure statements with such public authority or public benefit corporation that are the same as, different from or supplemental to any of the requirements contained herein and to provide only for internal employment discipline for any violation arising out of such internal filing.

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POL §74

Sec. 74. Code of ethics. 1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the

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legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes (Language in bold effective 2/12/10).

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to

exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

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EXEC §94

Executive Law §94

State Ethics Commission; Functions, Powers and Duties

§ 94.* State ethics commission; functions, powers and duties; review of financial disclosure statements; advisory opinions; investigation and enforcement.

* NB Effective until September 22, 2007

§ 94.* Commission on public integrity; functions, powers and duties; review of financial disclosure statements; advisory opinions; investigation and enforcement.

* NB Effective September 22, 2007

* 1. There is established within the department of state a state ethics commission which shall consist of five members and shall have and exercise the powers and duties set forth in this section only with respect to statewide elected officials and state officers and employees, as defined in sections seventy-three and seventy-three-a of the public officers law, candidates for statewide elected office, and the political party chairman as that term is defined in section seventy-three-a of the public officers law, and individuals who have formerly held such positions or who have formerly been such candidates.

* NB Effective until September 22, 2007

* 1. There is established within the department of state a commission on public integrity which shall consist of thirteen members and shall have and exercise the powers and duties set forth in this section only with respect to statewide elected officials and state officers and employees, as defined in sections seventy-three and seventy-three-a of the public officers law, candidates for statewide elected office, and the political party chairman as that term is defined in section seventy-three-a of the public officers law, lobbyists and the clients of lobbyists as such terms are defined in article one-A

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of the legislative law, and individuals who have formerly held such positions, were lobbyists or clients of lobbyists, as such terms are defined in article one-A of the legislative law, or who have formerly been such candidates. This section shall not revoke or rescind any regulations or advisory opinions issued by the state ethics commission and the temporary lobbying commission in effect upon the effective date of a chapter of the laws of two thousand seven which amended this section to the extent that such regulations or opinions are not inconsistent with any law of the state of New York, but such regulations and opinions shall apply only to matters over which such commissions had jurisdiction at the time such regulations and opinions were promulgated or issued. The commission shall undertake a comprehensive review of all such regulations and opinions, which will address the consistency of such regulations and opinions among each other and with the new statutory language. The commission shall, before April first, two thousand eight, report to the governor and legislature regarding such review and shall propose any regulatory changes and issue any advisory opinions necessitated by such review.

* NB Effective September 22, 2007

* 2. The members of the commission shall be appointed by the governor provided, however, that one member shall be appointed on the nomination of the comptroller and one member shall be appointed on the nomination of the attorney general. Of the three members appointed by the governor without prior nomination, no more than two members shall belong to the same political party and at least two members shall not be public officers or employees or hold any public office, elected or appointed. No member shall hold office in any political party or be employed as a lobbyist.

* NB Effective until September 22, 2007

* 2. The members of the commission shall be appointed by the governor provided, however, that one member shall be appointed on the nomination of the comptroller, one member shall be appointed on the nomination of the attorney general, one member shall be appointed on the nomination of the temporary president of the senate, one member shall be appointed on the nomination of the speaker of the assembly, one member shall be appointed on the nomination of the minority leader of the senate, and one member shall be appointed on the nomination of the minority leader of the assembly. Of the seven members appointed by the governor without prior nomination, no more than four members shall belong to the same political party and no members shall be public officers or employees or hold any public office, elected or appointed. No member shall be a member of the legislature, a candidate for member of the legislature, an employee of the legislature, a political party chairman as

defined in paragraph (k) of subdivision one of section seventy-three of the public officers law, or a lobbyist as defined in subdivision (a) of section one-c of the legislative law.

* NB Effective September 22, 2007

* 3. Members of the commission shall serve for terms of five years; provided, however, that of the members first appointed without prior nomination, one shall serve for one year, one shall serve for three years, and one shall serve for five years, as designated by the governor; the member first appointed on the nomination of the comptroller shall serve for four years and the member first appointed on the nomination of the attorney general shall serve for two years.

* NB Effective until September 22, 2007

* 3. Members of the commission shall serve for terms of five years; provided, however, that of the members first appointed without prior nomination, one shall serve for one year, one shall serve for two years, one shall serve for three years, and one shall serve for four years, as designated by the governor; the members first appointed on the nominations of the comptroller and the temporary president of the senate shall serve for four years and the members first appointed on the nominations of the attorney general and the speaker of the assembly shall serve for two years.

* NB Effective September 22, 2007

* 4. The governor shall designate the chairman of the commission from among the members thereof, who shall serve as chairman at the pleasure of the governor. The chairman or any three members of the commission may call a meeting.

* NB Effective until September 22, 2007

* 4. The governor shall designate the chairman of the commission from among the members thereof, who shall serve as chairman at the pleasure of the governor. The chairman or any seven members of the commission may call a meeting.

* NB Effective September 22, 2007

* 5. Any vacancy occurring on the commission shall be filled within sixty days of its occurrence, by the governor, in the same manner as the member whose vacancy is being filled was appointed. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he succeeds.

* NB Effective until September 22, 2007

* 5. Any vacancy occurring on the commission shall be filled within sixty days of its occurrence, by the governor, in the same manner as the member whose vacancy is being filled

was appointed. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he succeeds.

* NB Effective September 22, 2007

* 6. Three members of the commission shall constitute a quorum, and the commission shall have power to act by majority vote of the total number of members of the commission without vacancy.

* NB Effective until September 22, 2007

* 6. Seven members of the commission shall constitute a quorum, and the commission shall have power to act by majority vote of the total number of members of the commission without vacancy.

* NB Effective September 22, 2007

* 7. Members of the commission may be removed by the governor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

* NB Effective until September 22, 2007

* 7. Members of the commission may be removed by the governor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

* NB Effective September 22, 2007

* 8. The members of the commission shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

* NB Effective until September 22, 2007

* 8. The members of the commission shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

* NB Effective September 22, 2007

9. The commission shall: (a) Appoint an executive director who shall act in accordance with the policies of the commission. The commission may delegate authority to the executive director to act in the name of the commission between meetings of the commission provided such delegation is in writing and the specific powers to be delegated are enumerated;

(b) Appoint such other staff as are necessary to carry out its duties under this section;

(c) Adopt, amend, and rescind rules and regulations to govern procedures of the commission, which shall include, but not be

limited to, the procedure whereby a person who is required to file an annual financial disclosure statement with the commission may request an additional period of time within which to file such statement, due to justifiable cause or undue hardship; such rules or regulations shall provide for a date beyond which in all cases of justifiable cause or undue hardship no further extension of time will be granted;

(d) Adopt, amend, and rescind rules and regulations to assist appointing authorities in determining which persons hold policy-making positions for purposes of section seventy-three-a of the public officers law;

(e) Make available forms for annual statements of financial disclosure required to be filed pursuant to section seventy-three-a of the public officers law;

(f) Review financial disclosure statements in accordance with the provisions of this section, provided however, that the commission may delegate all or part of this review function to the executive director who shall be responsible for completing staff review of such statements in a manner consistent with the terms of the commission's delegation;

(g) Receive complaints and referrals alleging violations of section seventy-three, seventy-three-a or seventy-four of the public officers law, article one-A of the legislative law or section one hundred seven of the civil service law;

(h) Permit any person subject to the jurisdiction of the commission who is required to file a financial disclosure statement to request the commission to delete from the copy thereof made available for public inspection and copying one or more items of information which may be deleted by the commission upon a finding by the commission that the information which would otherwise be required to be made available for public inspection and copying will have no material bearing on the discharge of the reporting person's official duties. If such request for deletion is denied, the commission, in its notification of denial, shall inform the person of his or her right to appeal the commission's determination pursuant to its rules governing adjudicatory proceedings and appeals adopted pursuant to subdivision thirteen of this section;

(i) Permit any person subject to the jurisdiction of the commission who is required to file a financial disclosure statement to request an exemption from any requirement to report one or more items of information which pertain to such person's spouse or unemancipated children which item or items may be exempted by the commission upon a finding by the commission that the reporting individual's spouse, on his or her own behalf or on behalf of an unemancipated child,

objects to providing the information necessary to make such disclosure and that the information which would otherwise be required to be reported will have no material bearing on the discharge of the reporting person's official duties. If such request for exemption is denied, the commission, in its notification of denial, shall inform the person of his or her right to appeal the commission's determination pursuant to its rules governing adjudicatory proceedings and appeals adopted pursuant to subdivision thirteen of this section;

(j) Advise and assist any state agency in establishing rules and regulations relating to possible conflicts between private interests and official duties of present or former statewide elected officials and state officers and employees;

(k) Permit any person who has not been determined by his or her appointing authority to hold a policy-making position but who is otherwise required to file a financial disclosure statement to request an exemption from such requirement in accordance with rules and regulations governing such exemptions. Such rules and regulations shall provide for exemptions to be granted either on the application of an individual or on behalf of persons who share the same job title or employment classification which the commission deems to be comparable for purposes of this section. Such rules and regulations may permit the granting of an exemption where, in the discretion of the commission, the public interest does not require disclosure and the applicant's duties do not involve the negotiation, authorization or approval of:

- (i) contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses as defined in section seventy-three of the public officers law;
- (ii) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor;
- (iii) the obtaining of grants of money or loans; or
- (iv) the adoption or repeal of any rule or regulation having the force and effect of law;

* (l) Prepare an annual report to the governor and the legislature summarizing the activities of the commission and recommending changes in the laws governing the conduct of statewide elected officials, state officers and employees and political party chairs; and

* NB Effective until September 22, 2007

* (l) Prepare an annual report to the governor and legislature summarizing the activities of the commission during the previous year and recommending any changes in the laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission's conduct. Such report shall include: (i) a listing by assigned number of each complaint

and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint, and (ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, subject to the confidentiality requirements of this section, provided, however, that such annual report shall not contain any information for which disclosure is not permitted pursuant to subdivision seventeen of this section; and

* NB Effective September 22, 2007

(m) Determine a question common to a class or defined category of persons or items of information required to be disclosed, where determination of the question will prevent undue repetition of requests for exemption or deletion or prevent undue complication in complying with the requirements of such section.

10. The commission, or the executive director and staff of the commission if responsibility therefor has been delegated, shall inspect all financial disclosure statements filed with the commission to ascertain whether any person subject to the reporting requirements of section seventy-three-a of the public officers law has failed to file such a statement, has filed a deficient statement or has filed a statement which reveals a possible violation of section seventy-three, seventy-three-a or seventy-four of the public officers law.

11. If a person required to file a financial disclosure statement with the commission has failed to file a disclosure statement or has filed a deficient statement, the commission shall notify the reporting person in writing, state the failure to file or detail the deficiency, provide the person with a fifteen day period to cure the deficiency, and advise the person of the penalties for failure to comply with the reporting requirements. Such notice shall be confidential. If the person fails to make such filing or fails to cure the deficiency within the specified time period, the commission shall send a notice of delinquency: (a) to the reporting person; (b) in the case of a statewide elected official, to the temporary president of the senate and the speaker of the assembly; and (c) in the case of a state officer or employee, to the appointing authority for such person. Such notice of delinquency may be sent at any time during the reporting person's service as a statewide elected official, state officer or employee, political party chair or while a candidate for statewide office, or within one year after termination of such service or candidacy. The jurisdiction of the commission, when acting pursuant to subdivision thirteen of this section with respect to financial disclosure, shall continue notwithstanding that the reporting person separates from state service, or ceases to hold office as a statewide elected official or political party chair, or ceases to be a candidate, provided the commission

notifies such person of the alleged failure to file or deficient filing pursuant to this subdivision.

12. (a) If the commission receives a sworn complaint alleging a violation of section seventy-three, seventy-three-a or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission, or if a reporting individual has filed a statement which reveals a possible violation of these provisions, or if the commission determines on its own initiative to investigate a possible violation, the commission shall notify the individual in writing, describe the possible or alleged violation of such laws and provide the person with a fifteen day period in which to submit a written response setting forth information relating to the activities cited as a possible or alleged violation of law. If the commission thereafter makes a determination that further inquiry is justified, it shall give the individual an opportunity to be heard. The commission shall also inform the individual of its rules regarding the conduct of adjudicatory proceedings and appeals and the due process procedural mechanisms available to such individual. If the commission determines at any stage of the proceeding, that there is no violation or that any potential conflict of interest violation has been rectified, it shall so advise the individual and the complainant, if any. All of the foregoing proceedings shall be confidential.

(b) If the commission determines that there is reasonable cause to believe that a violation has occurred, it shall send a notice of reasonable cause: (i) to the reporting person; (ii) to the complainant if any; (iii) in the case of a statewide elected official, to the temporary president of the senate and the speaker of the assembly; and (iv) in the case of a state officer or employee, to the appointing authority for such person.

* (c) The jurisdiction of the commission when acting pursuant to this section shall continue notwithstanding that a statewide elected official or a state officer or employee separates from state service, or a political party chair ceases to hold such office, or a candidate ceases to be a candidate, provided that the commission notifies such individual of the alleged violation of law pursuant to paragraph (a) of this subdivision within one year from his or her separation from state service or his or her termination of party service or candidacy. Nothing in this section shall serve to limit the jurisdiction of the commission in enforcement of subdivision eight of section seventy-three of the public officers law.

* NB Effective until September 22, 2007

* (c) The jurisdiction of the commission when acting pursuant

to this section shall continue notwithstanding that a statewide elected official or a state officer or employee separates from state service, or a political party chair ceases to hold such office, or a candidate ceases to be a candidate, or a lobbyist or client of a lobbyist ceases to act as such, provided that the commission notifies such individual or entity of the alleged violation of law pursuant to paragraph (a) of this subdivision within one year from his or her separation from state service or his or her termination of party service or candidacy, or from his, her or its last report filed pursuant to article one-A of the legislative law. Nothing in this section shall serve to limit the jurisdiction of the commission in enforcement of subdivision eight of section seventy-three of the public officers law.

* NB Effective September 22, 2007

13. An individual subject to the jurisdiction of the commission who knowingly and intentionally violates the provisions of subdivisions two through five, seven, eight, twelve or fourteen through seventeen of section seventy-three of the public officers law, section one hundred seven of the civil service law, or a reporting individual who knowingly and wilfully fails to file an annual statement of financial disclosure or who knowingly and wilfully with intent to deceive makes a false statement or fraudulent omission or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. An individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of section seventy-four of the public officers law shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. An individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of section seventy-four of the public officers law shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation. An individual subject to the jurisdiction of the commission who knowingly and willfully violates article one-A of the legislative law shall be subject to civil penalty as provided for in that article. Assessment of a civil penalty hereunder shall be made by the commission with respect to persons subject to its jurisdiction. In assessing the amount of the civil penalties to be imposed, the commission shall consider the seriousness of the violation, the amount of gain to the individual and whether the individual previously had any civil or criminal penalties imposed pursuant to this section, and any other factors the commission deems

appropriate. For a violation of this subdivision, other than for conduct which constitutes a violation of section one hundred seven of the civil service law, subdivisions twelve or fourteen through seventeen of section seventy-three or section seventy-four of the public officers law or article one-A of the legislative law, the commission may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, such violation shall be punishable as a class A misdemeanor. A civil penalty for false filing may not be imposed hereunder in the event a category of "value" or "amount" reported hereunder is incorrect unless such reported information is falsely understated. Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement, or a violation of section seventy-three of the public officers law, except that the appointing authority may impose disciplinary action as otherwise provided by law. The commission may refer violations of this subdivision to the appointing authority for disciplinary action as otherwise provided by law. The commission shall be deemed to be an agency within the meaning of article three of the state administrative procedure act and shall adopt rules governing the conduct of adjudicatory proceedings and appeals taken pursuant to a proceeding commenced under article seventy-eight of the civil practice law and rules relating to the assessment of the civil penalties herein authorized and commission denials of requests for certain deletions or exemptions to be made from a financial disclosure statement as authorized in paragraph (h) or paragraph (i) of subdivision nine of this section. Such rules, which shall not be subject to the approval requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in article three of the state administrative procedure act but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty or commission denial of such a request shall be final unless modified, suspended or vacated within thirty days of imposition, with respect to the assessment of such penalty, or unless such denial of request is reversed within such time period, and upon becoming final shall be subject to review at the instance of the affected reporting individuals in a proceeding commenced against the commission, pursuant to article seventy-eight of the civil practice law and rules.

13-a. If the commission has a reasonable basis to believe that any person subject to the jurisdiction of the legislative ethics commission may have violated any provisions of section seventy-three or seventy-four of the public officers law, it shall refer such violation to the legislative ethics

commission unless the commission determines that such a referral would compromise the prosecution or confidentiality of its investigations and, if so, shall make such a referral as soon as practicable. The referral by the commission to the legislative ethics commission shall include any information relating thereto coming into the custody or under the control of the commission at any time prior or subsequent to the time of the referral.

14. A copy of any notice of delinquency or notice of reasonable cause sent pursuant to subdivisions eleven and twelve of this section shall be included in the reporting person's file and be available for public inspection and copying.

* 15. Upon written request from any person who is subject to the requirements of sections seventy-three, seventy-three-a or seventy-four of the public officers law, the commission shall render advisory opinions on the requirements of said provisions. An opinion rendered by the commission, until and unless amended or revoked, shall be binding on the commission in any subsequent proceeding concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such opinion may also be relied upon by such person, and may be introduced and shall be a defense, in any criminal or civil action. Such requests shall be confidential but the commission may publish such opinions provided that the name of the requesting person and other identifying details shall not be included in the publication.

* NB Effective until September 22, 2007

* 15. Upon written request from any person who is subject to the jurisdiction of the commission and the requirements of sections seventy-three, seventy-three-a or seventy-four of the public officers law, the commission shall render advisory opinions on the requirements of said provisions. An opinion rendered by the commission, until and unless amended or revoked, shall be binding on the commission in any subsequent proceeding concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such opinion may also be relied upon by such person, and may be introduced and shall be a defense, in any criminal or civil action. Such requests shall be confidential but the commission may publish such opinions provided that the name of the requesting person and other identifying details shall not be included in the publication.

* NB Effective September 22, 2007

16. In addition to any other powers and duties specified by

law, the commission shall have the power and duty to:

(a) Promulgate rules concerning restrictions on outside activities and limitations on the receipt of gifts and honoraria by persons subject to its jurisdiction, provided, however, a violation of such rules in and of itself shall not be punishable pursuant to subdivision thirteen of this section unless the conduct constituting the violation would otherwise constitute a violation of this section; and

(b) Conduct training programs in cooperation with the governor's office of employee relations to provide education to individuals subject to its jurisdiction; and

(c) Administer and enforce all the provisions of this section; and

(d) Conduct any investigation necessary to carry out the provisions of this section. Pursuant to this power and duty, the commission may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any books or records which it may deem relevant or material;

16-a. Within one hundred twenty days of the effective date of this subdivision, the commission shall create and thereafter maintain a publicly accessible website which shall set forth the procedure for filing a complaint with the commission, and which shall contain the documents identified in subdivision seventeen of this section, other than financial disclosure statements, and any other records or information which the commission determines to be appropriate.

17. * (a) Notwithstanding the provisions of article six of the public officers law, the only records of the commission which shall be available for public inspection and copying are:

(1) the information set forth in an annual statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law except the categories of value or amount, which shall remain confidential, and any other item of information deleted pursuant to paragraph (h) of subdivision nine of this section;

(2) notices of delinquency sent under subdivision eleven of this section;

(3) notices of reasonable cause sent under paragraph (b) of subdivision twelve of this section;

(4) notices of civil assessments imposed under this section which shall include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the commission, and any sanction imposed; and

(5) the terms of any settlement or compromise of a complaint

or referral which includes a fine, penalty or other remedy.

* NB Effective until September 22, 2007

* (a) Notwithstanding the provisions of article six of the public officers law, the only records of the commission which shall be

available for public inspection and copying are:

(1) the information set forth in an annual statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law except the categories of value or amount, which shall remain confidential, and any other item of information deleted pursuant to paragraph (h) of subdivision nine of this section;

(2) notices of delinquency sent under subdivision eleven of this section;

(3) notices of reasonable cause sent under paragraph (b) of subdivision twelve of this section;

(4) notices of civil assessments imposed under this section which shall include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the commission, and any sanction imposed;

(5) the terms of any settlement or compromise of a complaint or referral which includes a fine, penalty or other remedy; and

(6) those required to be held or maintained publicly available pursuant to article one-A of the legislative law.

* NB Effective September 22, 2007

* (b) Notwithstanding the provisions of article seven of the public officers law, no meeting or proceeding, including any such proceeding contemplated under paragraph (h) or (i) of subdivision nine of this section, of the commission shall be open to the public, except if expressly provided otherwise by the commission.

* NB Effective until September 22, 2007

* (b) Notwithstanding the provisions of article seven of the public officers law, no meeting or proceeding, including any such proceeding contemplated under paragraph (h) or (i) of subdivision nine of this section, of the commission shall be open to the public, except if expressly provided otherwise by the commission or as is required by article one-A of the legislative law.

* NB Effective September 22, 2007

(c) Pending any application for deletion or exemption to the commission, all information which is the subject or a part of the

application shall remain confidential. Upon an adverse determination by the commission, the reporting individual may request, and upon such request the commission shall provide, that any information which is the subject or part of the

application remain confidential for a period of thirty days following notice of such determination. In the event that the reporting individual resigns his office and holds no other office subject to the jurisdiction of the commission, the information shall not be made public and shall be expunged in its entirety.

18. If any part or provision of this section or the application thereof to any person or organization is adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect or impair any other part or provision or the application thereof to any other person or organization, but shall be confined in its operation to such part or provision.

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CIVIL SERVICE LAW § 107

§ 107. Prohibition against certain political activities; improper influence. 1. Recommendations based on political affiliations. No recommendation or question under the authority of this chapter shall relate to the political opinions or affiliations of any person whatever; and no appointment or selection to or removal from an office or employment within the scope of this chapter or the rules established thereunder, shall be in any manner affected or influenced by such opinions or affiliations. No person in the civil service of the state or of any civil division thereof is for that reason under any obligation to contribute to any political fund or to render any political service, and no person shall be removed or otherwise prejudiced for refusing so to do. No person in the said civil service shall discharge or promote or reduce, or in any manner change the official rank or compensation of any other person in said service, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose. No person in said service shall use his official authority or influences to coerce the political action of any person or body or to interfere with any election.

2. Inquiry concerning political affiliations. No person shall directly or indirectly ask, indicate or transmit orally or in writing the political affiliations of any employee in the civil service of the state or of any civil division thereof or of any person dependent upon or related to such an employee, as a test of fitness for holding office. A violation of this subdivision shall be deemed a misdemeanor and conviction thereof shall subject the person convicted to a fine of not less than one hundred dollars nor more than five hundred dollars or to imprisonment for not less than thirty days nor more than six months, or to both such fine and imprisonment. Nothing herein contained shall be construed to prevent or prohibit inquiry concerning the activities, affiliation or membership of any applicant or employee in any group or organization which advocates that the government of the United States or of any state or of any political subdivision thereof should be overturned by force, violence or any unlawful means.

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3. Political assessments. No officer or employee of the state or any civil division thereof shall, directly or indirectly, use his authority or official influence to compel or induce any other officer or employee of the state or any civil division thereof, to pay or promise to pay any political assessment, subscription or contribution. Every officer or employee who may have charge or control in any building, office or room occupied for any governmental purpose is hereby authorized to prohibit the entry of any person, and he shall not knowingly permit any person to enter the same for the purpose of making, collecting, receiving or giving notice therein, of any political assessment, subscription or contribution; and no person shall enter or remain in any such office, building or room, or send or direct any letter or other writing thereto, for the purpose of giving notice of, demanding or collecting a political assessment; nor shall any person therein give notice of, demand, collect or receive any such assessment, subscription or contribution. No person shall prepare or take any part in preparing any political assessment, subscription or contribution with the intent that the same shall be sent or presented to or collected of any officer or employee subject to the provisions of this chapter, and no person shall knowingly send or present any political assessment, subscription or contribution to or request its payment of any said officer or employee. Any person violating any provision of this subdivision shall be guilty of a misdemeanor.

4. Prohibition against promise of influence. Any person, who while holding any public office, or in nomination for, or while seeking a nomination or appointment for any public office, shall corruptly use or promise to use, whether directly or indirectly, any official authority or influence, whether then possessed or merely anticipated, in the way of conferring upon any person, or in order to secure or aid any person in securing any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon the consideration that the vote or political influence or action of the last-named person, or any other, shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt condition or consideration, shall be deemed guilty of bribery or an attempt at bribery. Any public officer, or any person having or claiming to have any authority or influence for or affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer, who shall corruptly use, or promise, or threaten to use any such authority or influence, directly or indirectly in order to coerce or persuade the vote or political action of any citizen or the removal, discharge or promotion of any officer or public employee, or upon any other corrupt consideration, shall also be guilty of bribery or of an attempt at bribery. Every person found guilty of such bribery,

or an attempt to commit the same, as aforesaid, shall, upon conviction thereof, be liable to be punished by a fine of not less than one hundred dollars nor more than three thousand dollars, or to imprisonment for not less than ten days nor more than two years, or to both such fine and imprisonment in the discretion of the court.

5. Violation of this section. Complaints alleging a violation of this section by a statewide elected official or a state officer or employee, as defined in section seventy-three of the public officers law, may be directed to the commission on public integrity.

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NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY

GUIDELINES CONCERNING THE PROPRIETY OF A STATE AGENCY ACCEPTING GIFTS

Gifts may occasionally be offered to State agencies. A gift may benefit the agency's official purposes. The Guidelines that follow are intended to provide guidance to State agency heads and ethics officers concerning the acceptance of such gifts. For the purposes of these Guidelines, a "gift" is anything of more than nominal value offered or given to a State agency under circumstances in which it may be reasonable to infer that the gift was intended to influence an action or decision of the State agency.

The Guidelines are not intended to provide answers to questions raised by specific factual situations. Rather, the Guidelines provide best practices as guidance for those instances when a State agency is offered or given a gift. These Guidelines are not binding upon the New York State Commission on Public Integrity ("Commission") in any action or proceeding.

STANDARDS FOR ACCEPTANCE OF GIFTS BY A STATE AGENCY

The former New York State Ethics Commission ("Ethics Commission") issued several Advisory Opinions concerning the propriety of a State agency accepting a gift.¹ In Advisory Opinion No. 92-1, the Ethics Commission offered several guidelines as to when it would be permissible for an agency to accept a gift. First, it is necessary to determine whether the agency has the statutory authority to accept gifts. An agency ought to seek guidance from the Attorney General to ascertain whether it has such authority. If the Attorney General determines that the State agency does not have the statutory authority to accept gifts, then the agency, in consultation with the Attorney General and, perhaps, others, may determine an alternative course of action.

EXAMPLE: State Agency A participated in a conference with other entities, which included vendors. During the conference, booths were set up for the vendors to display their products and explain their services. At the conclusion of the conference, one of the vendors wanted to donate their product to State Agency A. The product would benefit the agency's official purposes. State Agency A, however, did not have the statutory authority to accept gifts. After consultation, it was determined that State Agency B had the requisite authority to accept the gift on behalf of State Agency A. Once it was determined that there was an avenue to accept the gift, since the product was more than nominal value, State Agency A still had to ascertain whether it was reasonable to infer that the gift was offered or given to influence an action or decision of State Agency A.

Second, if the agency has the requisite statutory authority to accept gifts, the Ethics Commission stated in Advisory Opinion No. 92-1 that the agency head's authority to accept gifts from regulated persons and entities "must be tempered by consideration of Public Officers Law §73(5) which precludes accepting gifts under certain circumstances, and §74 which prohibits conflicts of interest." While these statutory provisions are not directly applicable to gifts to agencies, they serve as guidelines. Therefore, the agency head "must at all times be cognizant of actual and potential conflicts of interest when accepting contributions"

¹ The Public Employee Ethics Reform Act of 2007 created the New York State Commission on Public Integrity. The thirteen-member Commission assumed the powers of the New York State Ethics Commission and the New York Temporary State Commission on Lobbying. See, Chapter 14 of the Laws of 2007. Executive Law §94(1) states that "[t]his section shall not revoke or rescind any regulations or advisory opinions issued by the state ethics commission and the temporary lobbying commission in effect upon the effective dates," *i.e.*, September 22, 2007.

The agency head must take reasonable steps to assure that gifts are not accepted from individuals or entities where it is reasonable to infer that the gift was offered or given with the intent to influence the State agency. Such individuals and entities would include those who are involved in litigation against the agency or under investigation by the agency. The agency must not only remain impartial, but must appear impartial as well.

In addition, it may be reasonable to infer that a gift from other potential donors, such as lobbyists or applicants for permits or licenses, is intended to influence an action or decision of the State agency because of the donor's relationship with the agency. For purposes of determining whether the gift is intended to influence the State agency, the ethics officer should consider the source, timing and amount of the donation before accepting the gift. The donor should not be seen as attempting to curry favor.

EXAMPLE: A telecommunications company wants to give new, upgraded cell phones to all the field employees of a State agency. The telecommunications company has an open, pending bid with this State agency to provide telecommunication services to its central office for a five-year period. The State agency has the requisite authority to accept gifts and the additional cell phones for all field employees would benefit the agency's official purposes. However, because there is a pending contract before the agency on another telecommunications matter, the timing of the donation, the source of the donation and amount of the donation are all suspect in these circumstances. Therefore, the offer of new cell phones should be declined.

Finally, since the agency head who was the subject of Advisory Opinion No. 92-1 was authorized to delegate duties to agency employees, the Ethics Commission stated that the authority to accept contributions should not be delegated to those employees involved in the agency's regulatory functions.

The Commission reaffirms the guidance for gifts set forth in Advisory Opinions Nos. 92-1, 95-38, 96-2, 97-6 and 97-10. While it is not possible to identify all gift scenarios, the Commission offers the following guidelines with respect to other circumstances in which gifts may be offered to a State agency.

HOLIDAY GIFTS

As the Commission discussed in Advisory Opinion No. 08-01, sometimes a gift may be sent to the agency head or other employees with the intent that the gift be shared among others in the agency. Frequently during the holiday season, an agency head may receive candy, fruit or flowers from an individual or entity that is a disqualified source. As indicated above, the agency head must be cognizant, at all times, of actual and potential conflicts of interest when accepting contributions, including during the holidays. The Commission offers the following guidelines concerning this circumstance.

First, if an employee receives such a gift, the employee should promptly notify the ethics officer.

Second, after the ethics officer has been so notified:

- a) If the gift is a non-perishable item, or if the gift is a food item the value of which is more than the cost of returning the gift to the donor, the gift should be returned to the donor with a letter advising that gifts may not be accepted and should not be sent in the future. If the donor continues to send gifts on an annual basis after being notified, the matter may be referred to the Commission.
- b) If the gift is a perishable item, such as flowers, plants or fruit, or if the gift is a food item the value of which is less than the cost of returning the gift to the donor, the item may be placed in a "break room" or public place so that employees or members of the public can partake of it, or the item may be donated to a local charity. In either case, a letter should be sent to the donor advising that gifts may not be accepted and should not be sent in the future. If the donor continues to send gifts on an annual basis after being notified, the matter may be referred to the Commission.



EXAMPLE: A vendor delivers to the main reception desk of a State agency a gift basket of fruit. Since the item is perishable, the gift is donated to the local food pantry. In addition, a letter is sent to the vendor indicating that the gift could not be accepted and was given to the local food pantry, and informs the vendor not to send any other gifts the agency.

FREE OR SAMPLE ITEMS

State agencies may receive free products in order to determine whether the product will be beneficial to the agency. Services or products may be offered free of charge either on a trial basis or in return for the right to refer to the State agency's use of the product or service for marketing purposes. These types of offers provide the State agency with a potentially beneficial opportunity to try new products and services at minimal or no expense to the State.

In such circumstances, the timing, source and amount of any products or services offered without charge should be considered. No samples may be used for the personal benefit of any State employee. Any subsequent determination to purchase the same or similar product or service must be pursued in a manner consistent with procurement laws and guidelines. If the State agency determines not to accept the offer of product or services, the product should be returned to the donor.

There are also circumstances in which samples of new products are offered to a State agency for the purpose of testing their suitability for use in that agency's facilities. These items are provided in very limited quantities, serve a State agency purpose, and may be utilized or consumed in the testing process. As discussed above, adherence to procurement laws and guidelines is the best method for insuring that the use of such samples does not improperly affect the procurement process.

There may also be situations in which the sample item offered to a State agency for the purpose of testing is not consumable, such as books or computer software. In such circumstances, if the State agency determines that the sample item will not be utilized by the State agency, then the sample item should be returned to the donor.

EXAMPLE: A software company offers to a State agency the use of a new software product that will assist the agency in tracking cases throughout the State. The State agency accepts the offer and uses the software for six months as a demonstration project in one of its regional offices. At that time, the agency determines that it would be beneficial for the State agency to invest in this software for all of the regional offices. The State agency must comply with procurement laws and guidelines when purchasing the additional software.

EXAMPLE: The same software company offers their product on a trial basis to a State agency. After utilizing the software in its regional office, the agency determines that it does not provide all of the necessary programs that the State agency requires. The agency is to return the software to the company.

Under no circumstance may a State officer or employee utilize a sample item for personal use or gain. It is permissible to request a colleague to review or evaluate a sample item to determine whether it would support or promote a State agency purpose. On the other hand, by giving the item to another individual or entity, the State officer or employee may have violated Public Officers Law §74(3)(d), which prohibits a State officer or employee from using his or her official position to secure unwarranted privileges or exemptions for himself or others, or Public Officers Law §74(3)(h), which requires a State officer or employee to pursue a course of conduct that will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.



EXAMPLE: A State University professor meets with a representative of a text book publishing company who wants the professor to consider to a new series of text books for her students. The representative leaves a sample series for the professor's review. The professor reviews the series and decides not to use that series next semester. The professor then places the sample books on her personal Ebay account, and sells them. The professor has violated Public Officers Law §74(3)(d), which prohibits a State officer or employee from using or attempting to use her official position to secure an unwarranted privilege or exemption for himself or others, and Public Officer Law §74(3)(h), that requires State officers and employees to pursue a course of conduct that will not raise suspicion about the public that she is likely to be engaged in acts that are in violation of her trust.

GIFTS FROM OTHER GOVERNMENTAL ENTITIES

In some instances, a representative from another governmental entity may offer a gift to a unit of a State agency. For example, a local governmental entity may offer a gift to a State agency unit that provided training. Similarly, representatives from a foreign country may offer a gift after visiting a State agency for educational purposes.

Gifts that are offered to a unit of a State agency by another government official or entity, pursuant to their official duties, are generally permissible. We are guided by Public Officers Law §73(8)(e), the "government-to-government exception," which provides that the two-year and lifetime bars do not apply when a former State officer or employee carries out duties as an elected official or employee of a federal, State or local government or agency.

However, there may be instances in which, due to the donor entity's relationship with the State agency, such a gift may be improper depending upon the timing, source and amount of the gift. This would include gifts to agencies that license or regulate the activities of the donor entity, are involved in litigation with the donor entity, or audit the activities of the donor entity. In these circumstances, the guidelines discussed above regarding gifts to a State agency should be considered before accepting such a gift.

EXAMPLE: A delegation from a European government meets with State officers and employees to discuss the mass transit system. The delegation members bring a variety of foods from their country as a gift for the State officers and employees. While it is generally permissible to accept the gifts from the delegation, the employees are to notify the Ethics Officer of the gift when it is received. The agency Ethics Officer must be given the opportunity to determine whether it is permissible to accept the gift.

EXAMPLE: A State agency provides a two-day training to local government employees on recent changes in the statute that the local government employees are responsible for implementing. The State agency also licenses the activities of the local government agency; however, there are no pending applications for license renewals at the time of the training. The local government employees send a gift basket of fruit as a thank-you for the training. The State officer or employee is to notify the agency Ethics Officers that the gift has been received. Because it is a perishable item, the fruit basket may be put in a "break room" so that any employee may partake. However, a letter should be sent to the local governmental entity advising gifts should not be sent in the future.

EXAMPLE: State employees from the central office of region "A" of a State agency visited State employees at the central office of region "B" of the same State agency to learn about their operations and several of their departments. In appreciation for their help with respect to several new initiatives as a result of the visit, the employees of Region A sent gift certificates for coffee and donuts to the central office staff of region B. The acceptance of the gift certificates is permissible. In this instance, the donors are employees from another region within the same State agency.

GUIDANCE

State officers and employees are encouraged to consult with the Commission concerning an offer of a gift to a State agency.

Dated: February 3, 2009.

