STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

Conflict of Interest Screening Procedures

A. General Policy

All Department of Law attorneys are required by the State's Rules of Professional Conduct to maintain the confidences of their former clients, and not to engage in misconduct. *See, e.g.*, Rules of Professional Conduct (22 N.Y.C.R.R. pt. 1200) Rules 1.6, 1.9, 1.10 . Paralegals, investigators, accountants, auditors and other staff members who have obtained confidential information during periods of prior employment also should keep this information confidential. In addition, all Department of Law employees are governed by the restrictions set forth in the Public Officers Law, case law and the rules and opinions of the Commission on Public Integrity (and the Commission's predecessors).

As a result, all Department of Law attorneys, paralegals, investigators, accountants, and auditors are prohibited from working on any legal matter[1] involving a former employer or client, or having any discussions with any other staff member about any such legal matter, if: (1) the employee previously obtained confidential information or documents relating to the former employer or client; (2) the confidences received by the employee are material to the pending legal matter; and (3) the interests of the former employer or client are adverse to the interests of the State.

In addition, all attorneys, paralegals, investigators, accountants, and auditors entering state service from the private sector must consider recusal from any legal matter concerning a former employer or client with which there was a business relationship during the prior two years, *even if the employee has no confidential information*. Factors to be considered in making such a determination include but are not limited to: (1) the nature of the prior relationship; (2) the nature and

[1] For the purposes of these procedures, references to legal matters involving the State of New York shall include all legal matters where the Department of Law is investigating, regulating or litigating on its own behalf, or is providing representation to the State or any of its agencies, authorities and other state entities, or to any state officers or employees in their official capacity.

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importance of the employee's role in the matter, including the discretion to be exercised; and (3) the sensitivity of the matter. *See* N.Y. State Ethics Comm'n, Advisory Op. 98-9 (1998).

All attorneys, paralegals, investigators, accountants, and auditors have a continuing obligation to comply with these prohibitions, and must advise their supervisors if they know or become aware that a former client or employer is involved in a legal matter against the State, and that they therefore may have to be screened from the case.

B. Obligation to Report Potential Conflicts

1. Current Employees

All attorneys, paralegals, investigators, accountants, and auditors must advise the Department of Law if they have ever worked for, or obtained confidential information relating to, any individual or entity that they know is currently involved in a legal matter with the State of New York, where the interests of the former employer or client are adverse to the interests of the State of New York.

In addition, attorneys, paralegals, investigators, accountants, and auditors who have worked in the private sector within the past two years must advise the Department of Law if they know that any employer or client with which the employee had a business relationship during such two-year period is involved in any adverse legal matter with the State of New York.

2. Prospective Employees

All individuals applying to the Department of Law for a position as an attorney, paralegal, investigator, accountant or auditor will be required to state whether they have ever worked for, or obtained confidential information relating to, any individual or entity that the prospective employee knows is currently involved in any legal matter with the State of New York, where the interests of the former employer or client are adverse to the interests of the State of New York.

If the prospective employee is *currently* working on any such legal matter and has confidential information that is material to the legal matter, then the prospective employee will be told that, before an offer of employment can be made, the prospective employee may have to inform the client that an application for employment has been submitted to the Department of Law. Such decisions will be made on a case-by-case basis. In addition, the prospective employee will be prohibited from discussing the legal matter during the interview process.

Moreover, if the prospective employee wishes to work *on behalf of the State* on any legal matter where the prospective employee has confidential information relating to an adverse party, then the prospective employee will be informed that any offer of employment may be contingent upon obtaining: (1) written approval from the adverse party authorizing the prospective employee to work on the legal matter and waiving any right to seek the disqualification of the attorney or the Department of Law; and (2) written approval from the Commission on Public Integrity for the prospective employee to work on such legal matter.

C. Circumstances In Which Screening Procedures Will Be Implemented

1. Employees Who Previously Worked on Legal Matters Involving New York State

Any attorney, paralegal, investigator, accountant or auditor who, during any prior employment, worked on a legal matter in which the State of New York was an adverse party, and obtained confidential client information or documents material to such legal matter, shall be screened from the matter and from any substantially related legal matter. No screening shall be required if the former client grants approval for the employee to work on the legal matter.

2. Employees With Confidential Information

Any attorney, paralegal, investigator, accountant or auditor who, during any prior employment, obtained confidential information or documents of an employer or client, even where the former employer or client was not involved in any legal matter with the State of New York at the time, shall be screened from any legal matter involving the former employer or client where: (a) the employee obtained confidential information material to the legal matter; and (b) the interests of the former employer or client are adverse to the interests of the State of New York. No screening shall be required if the former client grants approval for the employee to work on the legal matter.

3. Employees Who Worked in the Private Sector During the Past Two Years

Any Department of Law attorney, paralegal, investigator, accountant or auditor who had a business relationship with a private employer or client during the past two years shall consult with his or her supervisor, who shall determine whether the employee should be screened from any particular matter concerning the former employer or client. Factors to be considered include but are not limited to: (1) the nature of the prior relationship; (2) the nature and importance of the employee's role in the matter, including the discretion to be exercised; and (3) the sensitivity of the matter. No screening shall be required if both the client and the Commission on Public Integrity grant approval for the employee to work on the legal matter.

D. Screening Procedures

Whenever an employee must be screened from a legal matter as required by Section C of these guidelines, the following screening procedures shall be established:

a. The screened employee shall be prohibited from participating in any and all discussions, deliberations, decisions or actions of the Department of Law relating to the legal matter;

b. The screened employee shall be prohibited from communicating with any other Department of Law employee regarding the legal matter, including but not limited to attorneys and other staff members working on the legal matter;

c. The screened employee shall be prohibited from providing any Department of Law employee with any confidential information relating to the adverse party;

d. The screened employee shall be prohibited from reviewing any documents relating to the legal matter, and no such documents may be maintained or stored in the office of the screened employee;

e. All Department of Law employees working on the legal matter shall be prohibited from discussing the matter with the screened employee or in the screened employee's presence;

f. All Department of Law employees who work on the legal matter will be informed of these procedures; and

g. All Department of Law employees who work on the legal matter shall seek to ensure that these procedures are also followed by all employees under their supervision, including secretaries and paralegals, as well as all attorneys and other employees assigned to the matter in the future.

E. Conclusion

As noted above, the Public Officers Law, the Rules of Professional Conduct, the rules of the Commission on Public Integrity, and the relevant case law and opinions place significant restrictions on the activities of Department of Law attorneys, paralegals, investigators, accountants, and auditors in legal matters where the interests of the State are adverse to the interests of former employers and clients.

The procedures set forth above are intended to ensure that all such employees comply with these ethical and legal requirements.

Please remember that the failure to follow these procedures could result not only in the filing of ethical charges, but also in the disqualification of the entire Department of Law from a case. As a result, it is particularly important that all attorneys, paralegals, investigators, accountants, and auditors become fully familiar with these screening procedures, and make sure that they are complied with at all times.