

NEW YORK STATE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT

Staff Recusal Policy and Procedure

All staff must at all times conduct themselves in accordance with the Public Officers Law and the Employee Policy and Procedure Manual of the Commission on Ethics and Lobbying in Government (the "Commission").

Recusal Policy:

Staff of the Commission should recuse themselves from Commission matters relating to any organization, entity or individual as to which it could be inferred that there is an apparent or real conflict of interest.

On an ongoing basis, staff should review their associations and relationships for potential conflicts, abide by this policy, and seek guidance in accordance with the procedures herein when necessary and appropriate.

Personal and Financial Interests:

Recusal should occur when: There exists any financial or personal interest, direct or indirect, that is incompatible with the discharge of the staff member's duties, or might reasonably be expected to improperly influence the staff member in the exercise of his or her official duties.

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

- A debtor/creditor relationship
- A fiduciary relationship
- A source of income
- A matter pertaining to a known relative (i.e., spouse, domestic partner or person who is a direct descendant of the individual's grandparents, or the spouse of such descendant, or a person who is related to the individual by law or through marriage) or a household member.
- A matter pertaining to a business investment or contractual relationship
- Investments, whereby the conduct of the Commission could reasonably be expected to result in any material impact on the value of such investment, either positive or negative
- A leadership role or other substantial role in a professional, trade, charitable or not-for-profit organization

An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of the above depending on the totality of the circumstances. A staff member is encouraged to contact the Chair of the Commission or the Commission's Ethics Officer for guidance.

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

Prior involvement relating to a matter:

- A staff member should recuse himself or herself from an official matter that involves any private sector individual, association, corporation, or other entity that employed or did business with the staff member, or a relative, within the last two years.
- Any staff member who had any involvement in a matter based on prior government service, prior to commencement to his or her Commission service, shall disclose the nature and extent of such involvement, as permissible under law, to the Ethics Officer and the Commission members. Such prior involvement shall not alone be a basis for recusal; recusal shall only be required if other criteria in this policy are met.

Procedure for Recusal:

- Upon discovery of a potential conflict of interest concerning any official business before the Commission, a staff member must promptly notify the Commission's Ethics Officer and disclose the nature of the potential conflict; should the staff member be the Executive Director or Ethics Officer, they shall notify the Chair of the Commission who shall take on the functions of the Ethics Officer below.
- The Commission's Ethics Officer may consult with the Executive Director of the Commission or the Chair of the Commission and they in turn may consult with the Executive Committee of the Commission.
- The Ethics Officer shall make a final determination as to whether the staff member must be recused from the relevant matter or business and the scope of such recusal.
- The Ethics Officer shall prepare a memorandum to file describing his or her determination.
- To the extent necessary, the appropriate staff and Commission members shall be advised of the Ethics Officer's determination.

Standard for Subcommittee

for Commission Staff Recusal Based on Former Government Involvement

1. For all existing or new matters undertaken by the Commission, the intake and case management system should indicate whether any current Commission employee had a previous connection to the matter under consideration. If such a connection exists, the employee should document his or her involvement in the prior matter. A recusal subcommittee of the Commission, Commissioners will review the information and make a determination as to whether that employee should be screened from any participation in the current investigation by the Commission.

2. N.Y. Rule of Professional Conduct 1.11 (reprinted below) provides that a lawyer who formerly served as public officer or employee of the government shall not represent a client in connection with a matter when the lawyer previously participated “personally and substantially” as a public officer or employee. Rule 1.11 permits the representation if the former government agency gives it consent in writing.
3. While Rule 1.11 is inapplicable to instances where, as here, government lawyers may have prior exposure to matters through other government service, as an independent governmental entity, it is incumbent for the Commission to maintain the absolute appearance of impartiality. Accordingly, the Commission has adopted a stringent standard that will require recusal of staff if it is found that they “personally and substantially” participated in a matter while serving in a prior government position.
4. The determination of whether a person participated “personally and substantially” is taken from 5 C.F.R. § 2737.201 (D) (2007) which utilizes that term in its imposition of a 2-year bar on former federal employees. 18 USC Sec. 207 (a)(1)(B) (2007) It provides:

The restrictions of section 207 (a) apply only to those matters in which a former Government employee had “personal and substantial participation, “exercise: though decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise.” To participate “personally” means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. “Substantially” means that the employee’s involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue...[t]he single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a “particular matter involving a specific party.”

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