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Court of Appeal

FIFTH CIRCUIT

STATE OF LOUISIANA

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The Fifth Circuit Court of Appeal adopts the following policy on Ethics:

The Court, its employees and individuals with whom the Court conducts business are required to comply with the provisions of the Code of Governmental Ethics, as stated in La. R.S. 42:1101-1170. The Court conducts mandatory, documented awareness training on the Code of Governmental Ethics for all employees at least once every year, and new employees receive this training within 90 days of hire.

Chief Judge Susan M. Chehardy

2/12/14

Date

THE LOUISIANA CODE OF GOVERNMENTAL ETHICS



I. INTRODUCTION TO THE CODE OF GOVERNMENTAL ETHICS

A. Policy Goals (R.S. 42:1101)

- * To ensure the public confidence in the integrity of government
- * To ensure the independence and impartiality of elected officials and public employees
- * To ensure that governmental decisions and policy are made in the proper channel of the government structure
- * To ensure that public office and employment are not used for private gain

B. Administration (R.S. 42:1131 et seq.)

(1) **Board of Ethics** established as of January 1, 1997

- Composed of 11 members; 7 appointed by the Governor; 2 elected by the Senate, 2 elected by the House of Representatives
- Initial terms are staggered, thereafter, each term is for 5 years with a 2 term limit on Board membership
- Administers the Code as to all state and local public employees, appointed members of boards and commissions, and elected officials other than judges

(2) Duties of the Board

- Issue advisory opinions interpreting the Code (R.S. 42:1134E)
- Conduct private investigations of alleged violations of the Code (R.S. 42:1134C and 1141C)
- Establish a computerized data management system (R.S. 42:1134M)
- Conduct educational activities, seminars and publish appropriate materials to provide instruction (R.S. 42:1134N)

II. KEY DEFINITIONS (R.S. 42:1102)

- A. **“Agency”** means a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity.
- B. **“Agency head”** means the chief executive or administrative officer of an agency or any member of a board or commission who exercises supervision over the agency.
- A. **“Controlling interest”** redefined by Act 1204 of the 1999 Regular Legislative Session to mean any ownership in any legal entity or beneficial interest in a trust, held by or on behalf of an individual or a member of his immediate family, either individually or collectively, which exceeds 25 percent of that legal entity.
- D. **“Immediate family”** as the term relates to a public servant means his children, spouses of children, brothers, sisters, spouses of his brothers and sisters, parents, spouse, and the parents of his spouse.
- E. **“Participate”** means not only to have final decision-making authority, but to take part in or to **have or share responsibility** for an action of the governmental entity through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or the failure to act or perform a duty.
- F. **“Public employee”** means anyone, whether compensated or not, who is (a) an officer or official of a governmental entity who is not filling an elective office; (b) appointed by an elected official to a position to serve the government or government agency, when the elected official was acting in his official capacity; (c) engaged in the performance of a governmental function; or (d) is under the supervision or authority of an elected official or another governmental employee.
- G. **“Public servant”** means a public employee or an elected official.
- H. **“Regulatory employee”** means a public employee who performs the function of regulating, monitoring, or enforcing regulations of any agency.
- I. **“Substantial economic interest”** means an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons, except the interest the public servant has in his public employment or the interest a person has as a member of the general public.
- J. **“Thing of economic value”** means money or any other thing having economic value, except:
- (1) promotional items having no substantial resale value;
 - (2) food, drink, or refreshments, including reasonable transportation and entertainment incident thereto, consumed while the personal guest of some person;

- (3) with reference to legislators and legislative employees only, reasonable transportation when organized primarily for educational or informational purposes, including food and drink incidental thereto; and,
- (4) salary and related benefits due to public employment.

K. **“Service”** means the performance of work, duties, or responsibilities, or the leasing, rental, or sale of movable or immovable property.

III. GENERAL PROHIBITIONS (R.S. 42:1111 - 1121)

NOTE: The following is a synopsis of some of the key provisions of the Code of Governmental Ethics. It is only a summary. For the official text of the provisions described below and for the text of other provisions of the Code, including information relative to exceptions to these general restrictions, refer to the Code at LSA R.S. 42:1101 et seq.

The Code of Governmental Ethics prohibits the:

- A. 1111A - Receipt of a thing of economic value from a source other than the governmental entity for the performance of official duties and responsibilities.
- B. 1111C(1)(a) - Receipt of a thing of economic value for the performance of a service substantially related to public duties or which draws on non-public information.
- C. 1111C(2)(d) - Receipt of a thing of economic value by a public servant for services rendered to or for the following:
 - (1) persons who have or are seeking to obtain a contractual or other business or financial relationship with the public servant’s agency;
 - (2) persons who are regulated by the public employee’s agency; or
 - (3) persons who have substantial economic interests which may be substantially affected by the performance or nonperformance of the public employee’s official duties.

These same restrictions apply to the public servant’s spouse and to any legal entity in which the public servant exercises control or owns an interest in excess of 25%.

- D. 1115 - Solicitation or acceptance of a thing of economic value as a gift from any of the persons listed in (C), above; however, the restrictions against the receipt of gifts from persons regulated by a public employee’s agency or from persons who may be substantially affected by his performance or nonperformance or his official duty applies only to “public employees” and not to elected officials. In addition, elected officials are not allowed to solicit or accept any thing of economic value from paid lobbyists or their employers.

- E. 1115.1 - Giving of food and drink valued at over **\$57** per single event to a public servant by one of the persons listed in subpart (C) or (A) above; however, this restriction does not apply to a gathering held in conjunction with a meeting of a national or regional organization or a statewide organization of government officials or employees, or to a public servant of a post-secondary education attending a private fundraiser for the post-secondary institution.
- F. 1111E - Receipt of a thing of economic value for assisting someone with a transaction with the agency of the public servant.
- G. 1112 - Participation by a public servant in a transaction involving the governmental entity in which any of the following persons have a substantial economic interest:
 - (1) the public servant;
 - (2) any member of his immediate family;
 - (3) any person in which he has an ownership interest that is greater than the interest of a general class;
 - (4) any person of which he is an officer, director, trustee, partner, or employee;
 - (5) any person with whom he is negotiating or has an arrangement concerning prospective employment;
 - (6) any person who is indebted to him or is a party to an existing contract with him and by reason thereof is in a position to affect directly his economic interests.

An **elected official** may participate in the debate and discussion of a matter which could violate this provision, but only if he discloses the nature of the conflict on the record of his agency prior to his participation in the debate and discussion, and prior to any vote taken on the matter. The elected official is not allowed to vote on the matter and he must recuse himself. R.S. 42:1120.

Appointed members of boards and commissions may recuse themselves to avoid a violation of Section 1112. Unlike elected officials, they may not participate in the debate or discussion of the matter. They must recuse themselves from all participation. R.S. 42:1112D.

Other public employees who are not sole decision makers can be disqualified from transactions that would violate this prohibition. A mechanism for disqualification is found in the rules promulgated by the Board. R.S. 42:1112C.

- H. 1113 - Bidding on, entering into, or being in any way interested in any contract, subcontract or other transaction under the supervision or jurisdiction of the public servant's agency. This restriction also applies to the immediate family members of the public servant and to legal entities in which the public servant and/or his family members

own an interest in excess of 25%.

- 1113B - Modification of the rule for appointed members of boards and commissions prohibits not only bidding on or entering into to such contracts, subcontract and transactions, but also being “in any way interested” in them; also, reference to an interest exceeding 25% is changed to reference legal entities in which the public servant or immediate family members have a “substantial economic interest.”
 - 1113D - Modification applicable to legislators prohibits a legislator, certain executive branch officials, their spouses or legal entities in which either owns an interest from entering into a contract or subcontract with any branch, agency, department or institution of state government, with a few exceptions.
- I. 1116 - A public servant’s use of the authority of his office to compel or coerce a person to provide himself or someone else with a thing of economic value that they are not entitled to by law or the use of the authority of his office to compel or coerce a person to engage in political activity. Also, a regulatory employee is prohibited from participating in any way in the sale of goods or services to persons regulated by his agency, if a member of his immediate family or if a business enterprise in which the regulatory employee or members of his immediate family own in excess of 25%, receives or will receive a thing of economic value by virtue of the sale.
- J. 1117 - It is prohibited for a public servant or other person make a payment, give, loan, transfer, or deliver or offer to give, loan, transfer or deliver a thing of economic value to a public servant when the public servant is prohibited by the Ethics Code from receiving such a thing of economic value.
- K. 1119 - Nepotism
- (1) Members of the immediate family of an agency head may not be employed in the agency.
 - (2) Members of the immediate family of a member of a governing authority or the chief executive of a governmental entity may not be employed in the governmental entity. The term “governing authority” includes parish councils, police juries, school boards, town councils, boards of aldermen, etc.
 - (3) Note that the application of this restriction is not affected by whether the agency head, chief executive or governing authority member has authority over or actually participates in the hiring decision - such family members are simply ineligible for employment.
 - (4) **Exceptions:**
 - (a) persons employed in violation of this rule continuously since April 1,

- 1980;
- (b) a person employed for one year prior to their family member becoming an agency head;
 - (c) employment of a school teacher who is a member of the immediate family of the superintendent or a school board member as long as the family member is certified to teach. Annual disclosure is required and forms are available from the Ethics Administration Program office. Pursuant to Act 1349 of the 1999 Regular Legislative Session, if the required disclosure is not timely filed, a late fee assessment of \$50 per day, with a maximum penalty of \$1,500, may be imposed;
 - (d) employment as a health care provider, of an immediate family member of a hospital service district board member or of a public trust authority board member as long as the hospital service district or the public trust authority has a population of less than 100,000 and the family member is a licensed physician or a registered nurse. Annual disclosure is required and forms are available from the Ethics Administration Program office. Pursuant to Act 1349 of the 1999 Regular Legislative Session, if the required disclosure is not timely filed, a late fee assessment of \$50 per day may be imposed, with a maximum penalty of \$1,500, or
 - (e) persons employed as volunteer firefighters.

L. 1121- Post Employment

- (1) During the two year period following the termination of public service as an **agency head** or **elected official**, these individuals may not assist another for compensation, in a transaction, or in an appearance in connection with any transaction involving their former agency nor may they render any service on a contractual basis to or for their former agency.
- (2) During the two year period following the termination of public service as a **board or commission member**, these individuals may not contract with, be employed in any capacity by, or be appointed to any position by that board or commission. The Board has interpreted "board or commission" to include a collective body that shares responsibility for its actions. This would include school boards, police juries, boards of aldermen, a group of selectmen, a council, etc.
- (3) During the two year period following the termination of public service as a **public employee**, these individuals may not assist another for compensation, in a transaction, or in an appearance in connection with a transaction involving the agency in which the former public employee participated while employed by the agency nor may the former public employee provide on a contractual basis to his former public employer, any service he provided while employed there.

IV. PROCEDURE

- A. Complaints - The Board can initiate an investigation into any matter which it has reason to believe may be a violation of the Code by a 2/3 vote of its membership (8 votes). A

copy of the vote, and a detailed explanation of the matter is sent to the complainant and the respondent. Additionally, the Board must consider any signed sworn complaint.

- B. Investigations - The Board considers information discovered through a confidential investigation. Some cases lead to voluntary admissions of violations of the Code through the publication of a consent opinion.

V. ENFORCEMENT AND PENALTIES

- A. Agency heads have a responsibility to report possible Code violations to the Board. R.S. 42:1161A

- B. Penalties

- (1) The Board has the authority to censure an elected official or other person within its jurisdiction and to impose a fine of not more than \$10,000 per violation; it does not have the authority to remove an elected official from office. R.S. 42:1153A
- (2) The Board has the authority to remove, suspend, reduce the pay or demote a public employee or other person and to impose a fine of not more than \$10,000 per violation. R.S. 42:1153B
- (3) The Board has the authority to impose restrictions on a former public servant to prevent appearances before his former agency and to prohibit the negotiation for or entering into business relationships with his former agency. R.S. 42:1151B
- (4) The Board has the authority to rescind contracts, permits and licenses, without contractual liability to the public, whenever the Board finds that a violation has influenced the making of such contract, permit or license, and that such rescission is in the best interest of the public. R.S. 42:1152
- (5) The Board may order the payment of penalties if an investigation reveals that any public servant or other person has violated the Code to his economic advantage and penalties can include the amount of such economic advantage plus one half. R.S. 42:1155A
- (6) The Board is authorized to order the forfeiture of any gifts or payments made in violation of the Code. R.S. 42:1155B

VI. FINANCIAL DISCLOSURE

- A. Persons holding statewide elected office, the secretaries of certain departments of state government, the superintendent of education, the commissioner of higher education, the president of each public postsecondary education system, and persons holding certain positions in the office of the governor must file a financial disclosure report with the Board of Ethics annually, by May 15 of each year. The financial disclosure report must be filed each year the office or position is held,

and the year following the termination of the office or position. R.S. 42:1124.

- B. State legislators, elected officials holding a public office representing a voting district with a population of 5,000 or greater, members of the Board of Ethics, the ethics administrator, and members of the Board of Elementary and Secondary Education must file a financial disclosure report with the Board of Ethics annually, beginning in 2009. The financial disclosure report must be filed each year the office or position is held, and the year following the termination of the office or position. The financial disclosure report is due by May 15th of each year. The penalty for late filing is \$100 per day. R.S. 42:1124.2.
- C. Members and designees of boards and commissions which have the authority to expend, disburse or invest \$10,000 or more in funds in a fiscal year, members of the State Civil Service Commission, and members of the Board of Commissioners of the Louisiana Stadium and Exposition District must file a financial disclosure report with the Board of Ethics annually, beginning in 2009. The financial disclosure report must be filed each year the office or position is held, and the year following the termination of the office or position. The financial disclosure report is due by May 15th of each year. The penalty for late filing is \$50 per day. R.S. 42:1124.2.1.
- C. Elected officials holding a public office representing a voting district with a population of less than 5,000 must file a financial disclosure report with the Board of Ethics annually, beginning in 2010. The financial disclosure report must be filed each year the office or position is held, and the year following the termination of the office and position. The financial disclosure report is due by May 15th of each year. The penalty for late filing is \$50 per day. R.S. 42:1124.3.

VII. ETHICS TRAINING

- A. Beginning January 1, 2012, each **public servant** shall receive a minimum of hour of education and training on the Code of Ethics during each year of his public employment or term of office. Newly elected officials must receive training within 90 days of taking the oath of office. (R.S. 42:1170)
 - (1) Persons who are public servants solely because he is an uncompensated, volunteer fireman or an uncompensated, auxiliary or reserve law enforcement officer are exempt from the training.
 - (2) Nonsalaried employees of hospitals operated by a hospital service are exempt as long as the employ cannot enter into contracts on behalf of the hospital for goods or services or the duties of the employee do not include the supervision of another public employee.
- B. Newly **elected officials** must receive ethics training within 90 days of taking the oath of office. (R.S. 42:1170), and Campaign Finance Training once during his term of office.

VIII. MISCELLANEOUS

- A. It is a violation of the Code to have one or more employees on the payroll who are not rendering services for which they are being paid or having one or more employees on the payroll whose employment is prohibited by the nepotism section of the Code. R.S. 42:1161F
- B. No action can be maintained by the Board more than 2 years after the discovery of the occurrence of the violation nor more than 4 years after the occurrence of the violation, whichever is shorter. R.S. 42:1163
- C. Judges, as defined in the Code of Judicial Conduct, are exempt from the provisions of the Code, although employees of the judge are subject to the Code. R.S. 42:1167
- D. It is a violation of the Code for any public servant to be disciplined or otherwise subjected to acts of reprisal for reporting to his agency head, the Board, or any person of competent authority or jurisdiction, information which he reasonably believes is in violation of any law, order, rule, or regulation within the Board's jurisdiction or any other alleged acts of impropriety within any governmental entity. R.S. 42:1169
- E. Attorneys who are also public servants are subject to the provisions of the Code in that capacity, notwithstanding any conflicting provisions in the Code of Professional Responsibility that might otherwise allow an attorney to engage in conduct which is prohibited by the Code.

Our web site is: <http://www.ethics.state.la.us/>

NOTE: This outline does not fully state the law. If interpretations of this outline conflict with the provisions of the Code of Governmental Ethics (LSA-R.S. 42:1101, et seq.), the Code will control.

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