



# THE ETHICS REVIEW

## A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

### POTTING SOILS, PEONIES & NEPOTISM

The Ethics Review has had a meteorological obsession of late, but now, as Spring has departed and Summer (whose lease hath all too short a date) beckons, we fix our editorial sights on a new, fertile and flowery subject: gardening.

The Ethics Review hopes everyone can appreciate a colorful bed of dahlias or a bright array of bell peppers even if you do not have a garden to cultivate (although, in some sense, we all do). So, whether while planting in the garden or merely gazing, take a few moments to remember the ethical prohibitions in the Public Officers Law that concern employment and family.

Section 73(14)

This section of the Public Officers Law **prohibits a State employee from “participat[ing] in any decision to hire, promote, discipline or discharge a relative” who is also a State employee.**

The rule is an easy one to follow. There are, however, a few points to keep in mind and one whopper of a definition to grapple with.

First, the prohibition only applies if your relative is being paid for her work. In other words, the prohibition does not cover a situation in which your relative is volunteering for the State.

Second, the rule effectively prohibits a State employee from **supervising** a relative.

Next, the obvious question: “Who is a relative?”

The Public Officers Law has an answer. A relative is “any person living in the same household as the individual and

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*any person who is a direct descendant of that individual's grandparents or the spouse of such descendant.”*

If you can figure out precisely what this means without having to draw a diagram or two, then the Ethics Review has a job for you. Luckily, we’ve done the work and attempted to bring some clarity to the definition.

A relative is (a) someone living in your house (even if the person is not related to you); (b) your parents; (c) your children/grandchildren; (d) your siblings and their children/grandchildren; (e) your cousins and their children/grandchildren; or (f) anyone who is married to a person covered in (c) through (e).

Section 74(3)(f)

This section of the Public Officers Law **prohibits a State employee from conduct that gives a “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 ... of any party or person.”**

The term *kinship* is (thankfully?) not defined. But, under this part of the law, a State employee must be careful to avoid situations in which she would be supervising or otherwise involved in employment decisions regarding any family member, even one not covered by Section 73(14).

### Dear JCOPE

Question:

One year ago, I left my State job, where I was the program coordinator. My old agency is huge, with many different divisions and departments. My program was housed in one of the smaller divisions. I have recently been approached by a company to help it prepare a response to a Request for Proposals (RFP). The RFP concerns a project I had no involvement with, and was issued by a new division of my former agency

that did not even exist while I was a State employee. Can I take the job? Does it make a difference that I was not a policy maker at my agency?

**Seeking Answers Very Eagerly on My Employment**

Answer:

SAVE ME, you have some good questions, all of which involve a post-employment restriction that is known as the “two-year” bar. There is an additional post-employment restriction, referred to as the “lifetime bar,” but, given your situation, that does not apply here.

**(Continued on next page)**

## Dear JCOPE (Continued)

Some background: The two-year bar applies to every former State employee, even if the person was not a policy maker or only worked part-time or on a temporary basis. The bar also applies to a former employee's *entire* agency even if the person had no interaction with a specific division. So, the bar definitely applies to you.

The two-year bar has two components: (1) an "appearance/practice" clause, and (2) a "back room services" clause. The appearance/practice clause generally prohibits a former employee from any work-related interaction and communication (i.e. phone calls, meetings, email) with *anyone* in her former agency. It also prohibits a former employee from submitting (or having someone else submit) documents with her name to her former agency. So, your name **cannot** be on any part of the response to the RFP.

The "back room services," in essence, prohibits a former employee from working behind the scenes to assist another person in the creation or development of (i) an application to be submitted to the former employee's State agency, or (ii) a plan or strategy for influencing a decision of the former employee's State agency. The back room services clause only applies when the former employee is being compensated for her work. So, in your case, you are **prohibited** from helping to prepare a response to the RFP (even if your name is not on the document) *unless* you decide to do the work for no compensation.

### ENFORCEMENT ACTIONS HIGHLIGHTS

**Prohibited Gifts:** A company admitted to paying for meals and beverages for an employee of the State Office of the Medicaid Inspector General (OMIG) and offering that employee a job, while under contract with OMIG. The company regularly interacted with the State employee, who was responsible for overseeing the services provided under the contract and repeatedly sought and obtained the State employee's insight on pending regulatory and legislative matters. The company, which is the client of a registered lobbyist, agreed to a fine of \$75,000. Legislative Law Article 1-A(1-m) (the Lobbying Act) prohibits gifts of more than nominal value and meals and beverages exceeding \$15 under circumstances in which it could appear to influence or reward official conduct. The company has agreed to provide continuing ethics training to its employees, particularly those working on the OMIG contract.

**Self Dealing:** A project manager for the State Office of General Services ("OGS") admitted to violating the State code of ethics prohibiting the use of one's public position for personal gain. The project manager was responsible for overseeing and evaluating the quality of a contractor's work on the renovation and expansion of a State facility in the Hudson Valley. During the renovation, he asked the contractor for a price quote for a water filtration system that he intended to install at his personal residence. He purchased the system for a price which included the contractor's discount that would not normally have been available to him or the general public. He was fined \$2,000 and required to complete supplemental ethics training. Public Officers Law Section 74(3)(d) prohibits State employees from using or attempting to use their official position to secure unwarranted privileges or exemptions for themselves or others.

**Self Dealing:** A former director of the State Office of Emergency Management admitted to violating the State ethics law prohibiting the use of his official position to secure unwarranted privileges for himself. The former director, working from his office in Albany, tasked crisis recovery workers with clearing a tree that had fallen on his property, blocking access to his Long Island home. Those workers were instead supposed to be clearing trees from public roads and highways that were impeding emergency response efforts throughout the State. The former director was dismissed from State service after the incident. As a part of the settlement with the Commission, he was fined \$4,000. Public Officers Law Section 74(3)(d) prohibits State employees from using or attempting to use their official position to secure unwarranted privileges or exemptions for themselves or others.

## QUOTES OF THE QUARTER

If we don't plant the right things, we will reap the wrong ones.

Maya Angelou

Trees and plants always look like the people they live with, somehow.

Zora Neale Hurston

### JCOPE ISSUES 2014 ANNUAL REPORT

Read the report on JCOPE's website:

[www.jcope.ny.gov](http://www.jcope.ny.gov) → Public Information → Publications → "2014 ANNUAL REPORT"

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