

A Guide to the Code

This provides a brief overview of the Code of Ethics as a reference for public officials and employees. It is not meant to serve as formal advice or to substitute for legal counsel. The Ethics Commission revises the Code of Ethics from time to time. For up-to-date and complete information, contact the Commission or visit our website.

Nepotism and Favoritism: You may not participate in official actions, decisions or deliberations that affect your family members, business associates, outside employers or any business you represent. You may not hire, evaluate, supervise or otherwise participate in employment decisions affecting your family members. Family members include your spouse, children and grandchildren, parents and grandparents, brothers and sisters, nieces and nephews, aunts and uncles, first cousins and in-laws. Business associates include anyone with whom you have joined together to achieve a common financial objective. *[See R.I.G.L. § 36-14-5(a), 5(d), 5(f), 7(a), and 7(b), Commission Regulations 36-14-5002 and 5005, General Commission Advisory No. 1]*

Gifts/Tickets, Etc: You may not accept anything of value based on the understanding that the gift will influence your judgment or official action. This prohibition includes anything of value given to your family or your business associates. *[See R.I.G.L. § 36-14-5(g),5(i)]* Additionally, if you participate making decisions, you (1) may not accept cash or forgiveness of debt from interested persons; (2) may accept things of value (gifts, loans, rewards, promises of future employment, favors, discounts, etc.) from interested persons having a value up to and including \$150 per instance and up to \$450 per year from each interested person. You are also required to report all gifts to the Ethics Commission by January 31 of the following year if the total value of all gifts is greater than \$100. The report should list the date the gift was received, the fair market value of the gift, the name, address, and employer of the person providing the gift and the name of the organization that the giver is representing. Limited exceptions apply. An interested person is a person, business, or representative that has a direct financial interest in a decision that you participate in making. *[See Commission Regulation 5009]* If you are a state procurement official, you may not accept any goods or services for personal use for less than fair market value from state vendors or prospective vendors within a 24 month time period. *[See R.I.G.L. § 36-14.1-2]*

Honoraria: You may be asked to speak at conferences, meetings, and other functions. You may not accept honoraria, or payment, if you use public time or resources to prepare for or make the presentation or if you have decision-making authority over the sponsor. *[See Commission Regulation 5010]*

Municipal/State Property: Public property, vehicles, equipment and supplies are intended to serve a public purpose. Any use of municipal or state property for private purposes must conform to laws, rules and regulations adopted by the state, city or by your department. *[See R.I.G.L. § 36-14-5(d)]*

Confidential Information: You may not use or disclose, for financial gain, confidential information acquired in the course of your official duties. [*See R.I.G.L. § 36-14-5(c)*]

Outside Employment: You may have a private or public sector job in addition to your state/municipal position. You may not accept outside employment that impairs your independence of judgment or that induces you to disclose confidential government information. [*See R.I.G.L. § 36-14-5(b)*]

Acting as an Agent or Attorney: You may not receive compensation to represent any person or organization before any agency, board, commission or other government entity over which you exercise fiscal or jurisdictional control. There are several exceptions: you may accept outside compensation to represent others before the government if (1) you are acting as a representative of a duly certified bargaining unit or (2) the representation takes place in a state court of public record or (3) you are asking the government entity to carry out a mandatory duty that does not involve any discretion. [*See Commission Regulation 36-14-5008(a)*]

Appearances Before Your Own Agency: You may not represent yourself or anyone else before your own . You also may not serve as an expert witness before your own agency, except under certain conditions. These prohibitions continue for one year after you leave your job. [*See R.I.G.L. § 36-14-5(e)*] The Ethics Commission may grant a hardship exemption allowing you to represent yourself before your own agency. To obtain an exemption you must request an advisory opinion. [*See R.I.G.L. § 36-14-11 and Ethics Commission Procedural Regulation 1024*]

Revolving Door: Members of a public body may not accept from that body appointment to any position that carries with it financial benefit or remuneration. This prohibition continues until one year after you leave your position. [*See Commission Regulation 36-14-5006*] If you hold a senior policy-making, discretionary or confidential position on the staff of a state elected official or the General Assembly, you may not seek or accept other state employment in the classified, unclassified, or nonclassified service. This prohibition continues until one year after you leave your job. [*See R.I.G.L. § 36-14-5(o)*] Limited exceptions apply under both provisions.

Contracts: You may not enter into any contract with state or local government unless the contract is awarded through an open and public bidding process, including prior public notice and subsequent public disclosure. You may not be hired to provide professional services unless there is prior public notice and subsequent disclosure. These prohibitions also apply to your family, your business associates and to any business in which you, your family or business associates have a 10% or greater equity interest or a \$5000 or greater cash value interest. [*See R.I.G.L. § 36-14-5(h)*]

Transactions with Subordinates: You may not engage in a financial transaction, including private employment, loans, monetary, political or charitable contributions with an employee, contractor, or consultant over whom you exercise supervisory responsibilities. Exceptions include transactions in the normal course of a regular commercial business, the subordinate initiates the financial transaction, and charitable events that are the sponsored by highest official or governing body of the state or municipality. [*See Commission Regulation 36-14-5011*]

DO I HAVE A CONFLICT OF INTEREST?

Is it "reasonably foreseeable" that:

1. A decision I am helping to make,
2. Will result in a financial benefit or detriment,
3. To:
 - A. Me; or
 - B. A member of my family; or
 - C. My outside employer; or
 - D. My business associate*.

*Your "business associates" are any persons or entities that you are joined with to achieve a common financial objective. These include not only your business partners, but also people you have hired such as an attorney, accountant, realtor, contractor, etc. These also include any organizations, even if not-for-profit, for which you are an officer or director.

RECUSAL

The Code of Ethics provides that public officials and employees must file a statement of conflict of interest, or recusal form, concerning matters where he or she may have a conflict of interest in the discharge of his or her official duties. A conflict of interest may exist if an official/employee can reasonably expect that his or her official conduct will directly result in a financial benefit to him/herself, family, business associates, employers, or businesses that the official represents. The conflict need not be certain to occur, but the probability must be greater than "conceivably". [See R.I. Gen. Laws, §36-14-6, Regulations 36-14-5002, 36-14-5005, 36-14-6001 and 36-14-6002]

WHAT IS RECUSAL

Recusal, under the Code of Ethics, refers to a public official or employee declining to participate in a matter because of a potential conflict of interest under the Code of Ethics. Recusal means that you are not participating in deliberations or debates, making recommendations, giving advice, considering findings, or in any other way assuming responsibility for or participating in any aspect of the work or decision-making relating to the matter where there are potential conflicts of interest. It does not mean that the public official must leave the room if it is an open meeting, although a public official may voluntarily choose to do so. However, if the public body is in executive session, once the official has recused, he or she has no more right to be in the room than any other member of the general public.

HOW TO RECUSE

- Write or sign a memo or complete a form called the Statement of Conflict of Interest, including:
 - Name
 - Position & Agency
 - Describe the Nature of your Conflict
 - Indicate that you are recusing from participation
 - Sign the memo or form under penalty of perjury
- Present the original to your presiding officer, appointing authority, director, or immediate superior
- Send a copy to the Ethics Commission

DELEGATION

If a public official or employee recuses on an issue, there may be a need to have another person handle the matter. The Code of Ethics prohibits the recusing person from exercising any and all authority relating to the matter, including assigning the matter to a subordinate. It is the obligation of the recusing person's supervisor, presiding officer, or appointing authority to assign the responsibilities to someone who does not have a conflict of interest.

QUORUM

Occasionally, several members of a public board may recuse on the same matter because of potential conflicts of interest. This may cause the board to lack a sufficient quorum to vote. In limited circumstances, the Ethics Commission may grant a hardship exception based on the Rule of Necessity, thereby allowing one or more of the recusing members to vote. The public body must seek an advisory opinion from the Ethics Commission requesting a Rule of Necessity exception before acting on the matter.

Advisory Opinions

Advisory opinions are interpretations of the Rhode Island Code of Ethics. A public official or employee may receive specific guidance from the Ethics Commission about a particular circumstance by seeking an individual advisory opinion. The Commission also issues General

Commission Advisories concerning matters of a general nature, which may be used as guidance for public officials and employees.

How to Ask for an Advisory Opinion

If you are an elected or appointed public official of State or local government, or if you are a public employee of State or local government, you may request advice from the Ethics Commission. If you believe you may face a real or potential conflict of interest, the time to request an advisory opinion is before you take any official action. The Commission responds to most advisory opinion requests within two to three weeks. In emergency situations, the Commission may be able to offer preliminary advice within days or even hours.

Write a letter to the Commission requesting an advisory opinion. The letter should contain a complete statement of the facts. The Commission will rely upon the facts as represented in your letter. You may write a paragraph or several pages depending on your particular circumstances. You should include:

- Your name and official position.
- Briefly, the name, jurisdiction and powers of your agency, commission, or office.
- The nature of the potential conflict.
- A summary of relevant facts.
- Any time constraints.

The Commission will send you a letter confirming receipt of your request and scheduling a hearing date. All hearings involving advisory opinions are open public hearings. Prior to the hearing, you will receive a draft recommendation prepared by a staff attorney. You may participate in the hearing if you choose. At the hearing the Commission will consider both the draft recommendation and comments or concerns submitted by the requesting party. The Commissioners may also ask questions to clarify any relevant facts.

The Commission will adopt an advisory opinion by a vote of at least 5 of the 9 members. You will receive a written copy. This opinion and your written request are public records. All advisory opinions are "binding" on the Commission. That means that if you abide by the opinion in good faith, and if you did not misstate or withhold material facts in your request for the opinion, you cannot be held in violation of the Code in any subsequent proceeding concerning your actions.

For more information see: *R.I. Gen. Laws 36-14-11* and *Rhode Island Ethics Commission Regulation 1024*, or call the Commission at 222-3790 (V/TT).

ENFORCEMENT OF THE CODE OF ETHICS

COMPLAINT

Any person may submit a signed, notarized complaint on forms provided by the Commission. The complaint must name the individual alleged to have violated the Code (the "respondent"),

identify the respondent's public office, and in detail the specific acts that allegedly violate the Code of Ethics. The Commission also may initiate its own investigations based on information received indicating possible violations of the Code.

NOTICE TO ALL PARTIES

Within 3 working days of the receipt of any complaint, the Commission mails to the complainant and the respondent copies of the complaint, the Code of Ethics, and Commission regulations. The Commission then sends timely notices of subsequent actions.

INITIAL DETERMINATION

At this first stage of review the Commission determines whether the complaint falls within its jurisdiction. Meeting in closed session the Commission either dismisses the complaint or initiates a full investigation. The Commission also may conduct a threshold inquiry to determine whether the factual allegations of the complaint have merit. Neither the complainant nor the respondent participates in the initial determination.

INVESTIGATION

The Commission may issue subpoenas to compel the production of evidence or the attendance of witnesses. Staff Investigators may take oral or written evidence under oath or affirmation. An investigation must be completed within 180 days after the complaint is filed, unless the Commission votes to approve one or, at most, two 60-day extensions for good cause. Investigative Reports become public records after a probable cause hearing has been completed.

PROBABLE CAUSE HEARING

The respondent is mailed a copy of the Investigative Report at least 14 days prior to a scheduled hearing. At the hearing, the prosecution presents the results of the investigation. The Commission reviews the Investigative Report and any answer or other submission by the respondent and/or respondent's counsel. The hearing is closed to the public, but the respondent, respondent's counsel, and the complainant may be present. The Commission may then vote to:

- dismiss the complaint for lack of evidence;
- continue the investigation (subject to extension limits noted above); or,
- find that probable cause exists to support the allegations.

If the Commission finds probable cause to support the allegations an adjudicative hearing is scheduled, with at least 15 days prior notice. This is an adversarial hearing. The prosecutor and the respondent and/or respondent's counsel may present evidence and examine and cross-examine witnesses. Commissioners also may question witnesses. Rules of evidence are followed, regulations provide for discovery, and principles of due process govern all procedures. A stenographic record is kept and the hearing is conducted in an open and public session.

FINAL DISPOSITION

The Commission meets in closed session to deliberate and determine whether there has been a knowing and willful violation of the Code of Ethics. Upon a finding of violation, the Commission may:

- issue a cease and desist order;
- require the respondent to file any statement mandated by the Ethics Code;

- impose a civil fine of up to \$25,000 and the return of any unjust enrichment; or,
- for egregious violations, remove from office any official not subject to impeachment.

Financial Disclosure

Q. Who is required to file with the Ethics Commission?

A. State or municipal elected officials, state appointed officials, certain state employees and appointees holding major decision-making positions, certain enumerated municipal appointees and municipal appointees who exercise decision-making authority over the expenditure of more than fifty thousand dollars (\$50,000) in public funds in a year. All officials must continue to file Financial Disclosure Statements until they have been out of office for one full calendar year. Candidates for elected office are required to file a Financial Disclosure Statement within 30 days of the deadline for declaring candidacy.

Q. When must the statements be filed?

A. The Code of Ethics requires that a Financial Disclosure Statement be filed with the Ethics Commission by the last Friday in April, or within thirty (30) days of appointment to a public position or declaration as a candidate in an election.

Q. What is the purpose of financial disclosure?

A. The purpose of requiring financial disclosure is to help insure that those people who are acting in the public interest do not use their public positions to further their private financial interests. The financial Disclosure Statement also provides evidence that there are no conflicts between an official's financial interests and his or her public office.

Q. What information is required?

A. The Financial Disclosure Statement requires the listing of certain assets and sources of income, but does not required divulging net worth. Some information that is required is: the names of employers of the public official, spouse, and dependent children; names of businesses in which the public official, spouse or dependent children have at least a 10% of \$5,000 ownership or investment interest; description of Rhode Island real estate, other than principal residence; debts or more than \$1,000 to anyone other than regulated financial institutions or credit cards.

Q. What if I cannot meet the deadline to submit the Financial Disclosure Statement?

A For anyone who is already in office, the Ethics Commission will allow an extension of up to sixty (60) days if the request is received before the filing deadline, or if the deadline is not met due to physical or mental incapacity. A candidate for public elective office may obtain an extension of fifteen (15) days if a written request is received by the Commission by the date on which the statement is due.

Q. What are the penalties if a violation occurs?

A. If a knowing and willful violation of the provisions of the Code of Ethics is found, the Ethics Commission may impose a civil penalty of up to \$25,000. In cases of non-filing of the financial statement, most penalties are \$1000 or less, but higher penalties have been assessed.

Q. Where do I get a Financial Disclosure Statement?

A. Contact the Ethics Commission at 222-3790.