

MONTGOMERY COUNTY PUBLIC ETHICS LAW—TRAINING (bcc)
Hypothetical Cases

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Participation Of Public Employees In Matters

- I. J. Caesar is a member of the Committee on Children and Youth. The Committee is responsible for providing advice to the Department of Health and Human Services (DHHS) regarding the funding and implementation of DHHS programs designed to support children, youth and families. Mr. Caesar's sister, Calpurnia, owns and operates a business that provides child care. Calpurnia accepts clients who pay for child care services with a County voucher. DHHS issues County vouchers to income qualified parents of children. At Mr. Caesar's first committee meeting the chair announces that the first item on the agenda is to provide advice to DHHS regarding the adequacy of the funding level of the County voucher program.
- A. Is Mr. Caesar subject to the County ethics law?
 - B. Must Mr. Caesar take his sister's business into account before participating in the Committee's discussion on the appropriate funding level for the County voucher program?
 - C. Does it make any difference that Calpurnia's business is only worth \$500?
 - D. Does the ethics law prohibit Mr. Caesar from participating in the Committee's discussion on the appropriate funding level for the County voucher program?
- II. Ms. Elizabeth Tudor is a member of the Board of Directors for England Estates. England Estates is an exclusive common ownership community that imposes strict regulations concerning the appearance of homes in the association. Ms. Tudor has been appointed to the Commission on Common Ownership Communities (COCOC). Ms. Tudor does not receive compensation for performing the duties of either position. Mary Stuart, a resident of England Estates, has filed a complaint against England Estates with COCOC, because England Estates refuses to permit her to paint her front door royal blue. Ms. Tudor is assigned to a panel charged with responsibility for adjudicating this complaint.
- A. Does the ethics law prohibit Ms. Tudor from participating in this matter?
 - B. Would it make a difference if the case involved Scotland Estates instead of England Estates?

Prohibited Holdings and Employment/Secondary Employment

- III. Mr. T. A. Edison serves as a member of the Cable Communication Advisory Committee (CCAC). Mr. Edison's recently deceased uncle, B. Franklin, has left Mr. Edison 1000 shares of IBM stock with a current market value of \$100,000. The staff at the Department of Housing and Community Affairs (DHCA) provides staff support to the CCAC. DHCA has a consulting contract with IBM to design a software program to track consumer complaints against the cable franchise holder.
- A. Does the ethics law require Mr. Edison to choose between accepting his inheritance or continuing as a member of the CCAC?
- B. Would the answer differ if Mr. Edison was a paid employee of DHCA?
- IV. Mr. R. Gatling serves as a member of the Firearms Safety Advisory Committee. An application from the HelpYouAim training Academy seeks certification from the Committee for a new outdoor rifle range in Bethesda. Mr. Gatling has a contract with HelpYouAim to design the facility. Does this raise any concerns?
- V. Mr. A. Lincoln is a member of the Merit System Protection Board. The position is paid. At the time he was appointed to the Merit Board he disclosed that he was an attorney engaged in the private practice of law. Mr. Lincoln has now decided to leave the practice of law and accept employment with the United States.
- A. Does Mr. Lincoln need to obtain the permission of the Ethics Commission?
- B. Would it make any difference if Mr. Lincoln were a member of the Commission on Landlord Tenant Affairs (whose members are unpaid)?

Post-County Employment

- VI. Mr. T. Roosevelt has just received an offer of employment from a cable communication provider that holds a cable communication franchise from Montgomery County. Until his term expired last week, Mr. Roosevelt was a member of the Cable Communications Advisory Committee and had participated in discussions on whether Montgomery County should renew the franchise of the cable company that had just offered him employment. Mr. Roosevelt's job for the cable company would involve acting as liaison between the cable company and the Montgomery County Government.
- A. Does the County ethics law prohibit Mr. Roosevelt from accepting this employment offer?

- B. Does it matter under the Ethics law whether Mr. Roosevelt had vehemently opposed renewing the franchise with the cable company that has just offered him employment?
- C. Would it matter if the cable company wanted to hire Mr. Roosevelt to act as a liaison between the cable company and Fairfax County?

Accepting Gifts

- VII. Ms. A. Adams is a member of the Fire & Rescue Commission. Mr. T. Jefferson, who is president of a local fire and rescue department (LFRD), has invited Ms. Adams to a banquet where the LFRD proposes to present Ms. Adams with a plaque for her 30 years of service as a Montgomery County Public School teacher. The Fire and Rescue Commission is currently considering adoption of a regulation that governs the conduct of volunteer fire fighters.
 - A. May Ms. Adams accept the invitation to the banquet?
 - B. May Ms. Adams accept the ceremonial plaque?

Soliciting Gifts

- VIII. Miles Standish is a member of the Charter Review Commission. He is trying to help his son's high school baseball team raise money to go to the National Baseball Hall of Fame in Cooperstown, NY.
 - A. Does the ethics law prohibit Mr. Standish from approaching other Commission members at a Commission meeting for a donation to support his son's team?
 - B. Would it make any difference if Mr. Standish had decided to solicit this donation for the Red Cross, a charitable organization, after work and while not identifiable as a public employee?

Prestige of Office

- IX. Mr. N. Bonaparte is a member of the County's Consumer Affairs Advisory Committee. Mr. Bonaparte owns a car dealership in Silver Spring. He has recently aired a television commercial in which he prominently explains that as a member of the Montgomery County Consumer Affairs Committee he understands how important it is to give consumers a square deal. Has Mr. Bonaparte violated the County ethics law?

Political Activities

- X. Ms. S.B. Anthony is a member of the South County Advisory Board. She wishes to support the campaign of S. Colbert for Congress from Maryland. Through her involvement with the Advisory Board, Ms. Anthony has developed an email contacts list including a great number of email addresses of citizens of the South County and of County employees. Can she use this list of contacts to send emails encouraging these persons to vote for S. Colbert?

Financial Disclosure

- XI. Ms. A. Rockefeller is a member of the Montgomery County Board of Appeals. She is required to file a public financial disclosure statement. Does Ms. Rockefeller have to report on the financial disclosure form all of the business interests of her husband, Mr. J. Rockefeller, even if she has no control over those interests?

Procedure

- XII. Mr. A. Capone is a County employee who provides staff support to the Board of License Commissioners. The Board of License Commissioners is meeting to consider whether to grant a liquor license to Ms. M.A. Baker. To Mr. Capone's surprise, Mr. M.G. Kelley, who is a member of the Board of License Commissioners, votes to deny the license. Mr. Capone knows that Mr. Kelley owns a coffee shop located next door to Ms. Baker's establishment, and Mr. Capone had, therefore, expected Mr. Kelley to recuse himself from the Baker licensing matter.
- A. May Mr. Capone ask for an advisory opinion concerning the actions taken by Mr. Kelley?
- B. Can Mr. Capone file a complaint with the Ethics Commission concerning Mr. Kelley's conduct?
- C. Does the Ethics Law require Mr. Capone to file a complaint against Mr. Kelley?

MONTGOMERY COUNTY PUBLIC ETHICS LAW—TRAINING
Answers to Hypothetical Cases

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Participation of Public Employees In Matters

- I. The Case of Caesar's Child Care Center
- A. Mr. Caesar is subject to the County ethics law because the ethics law applies to all "public employees." A public employee includes paid and unpaid members of boards, committees, and commissions. § 19A-4(m).
 - B. Mr. Caesar must take his sister's business into account before participating in the Committee's discussion on the appropriate funding level for the County voucher program. A public employee must not participate in a matter that affects a business in which the public employee or a **relative** has an **economic interest**. § 19A-11(a)(1). Relative is broadly defined; it includes siblings. § 19A-4(n).
 - C. The value of Calpurnia's business is relevant because the participation rule has certain thresholds. § 19A-11(c). An economic interest only includes:
 - 1. Source of income exceeds \$1,000.00/year;
 - 2. Ownership interest exceeds 3% [that captures Calpurnia]; or
 - 3. Any other economic interest worth more than \$1,000.00.
 - D. The ethics law prohibits Mr. Caesar from participating in the Committee's discussion on the appropriate funding level for the County voucher program if Caesar knows about his sister's business, because he would be participating in a matter that affects a business, in a manner distinct from its effect on the public generally, in which he knows a relative holds an economic interest.
- II. The Case of the Blue Door
- A. The ethics law prohibits Ms. Tudor from participating in this matter because a public employee [Ms. Tudor] must not participate in a matter if the employee knows that any party to the matter [England Estates] is a business for which the public employee is a director—the Divided Loyalty Rule. § 19A-11(a)(2)(A).

- B. Ms. Tudor could participate if the complaint was filed against Scotland Estates because Ms. Tudor would not be participating in a matter that affects, in a manner distinct from its effect on the public generally, any property or business in which she or a relative holds an economic interest.

Prohibited Holdings/Secondary Employment

III. The Case of Edison's Dilemma

- A. Mr. Edison can continue on the CCAC and keep the stock. A public employee must not be employed by or own more than 1% of any business that is regulated by, negotiates with, or contracts with the County agency with which the employee is affiliated. § 19A-12(b). IBM contracts with DHCA, but Mr. Edison is not affiliated with DHCA. Ethics Commission has ruled that merely receiving staff support is not affiliation with an agency. *Advisory Opinion No. 03-014*. But see *Advisory Opinion 02-013* (Mental Health Advisory Committee is affiliated with DHHS because it performs a watchdog function over DHHS-provided services)
- B. Mr. Edison could remain employed by DHCA and keep the stock because, although he is now affiliated with DHCA, he is not employed by IBM and does not own more than 1% of IBM.

IV. The Case of Gatling's Design Services

Mr. Gatling's contract with HelpYouAim would constitute prohibited outside employment pursuant to § 19A-12 of the County Code. The Law defines "employ" as "engaging in an activity for compensation," and "employer" means "any person who pays or agrees to pay compensation for services rendered." Mr. Gatling would be "employed" by a firm that is regulated by the Firearms Safety Advisory Committee.

V. The Case of Mr. Lincoln's New Job

- A. Mr. Lincoln needs Ethics Commission approval for his new job. A public employee must not engage in any outside employment unless the employment is approved by the Ethics Commission, § 19A-12(a)(1). This does not apply to employment held at the time of appointment, if disclosed to the appointing authority and Council, even if clients or customers later change.
- B. Mr. Lincoln would not need Ethics Commission approval if he were on COLTA because the Ethics Commission's secondary employment regulation exempts uncompensated, appointed officials from the secondary employment approval process.

Post-County Employment

VI. The Case of Mr. Roosevelt's New Deal

- A. Mr. Roosevelt cannot accept employment with the cable provider because a former employee must not work on or assist any party, other than the County, in a case, contract, or specific matter for 10 years after **significantly participating** in the matter. § 19A-13(a).

But the Commission has narrowly interpreted § 19A-13(a), given its proscription against working on the same "specific matter" and its relatively harsh 10-year prohibition. *See Advisory Opinion 03-015* (former county employee could work for company conducting inventory of bus stops although duties as a public employee included planning bus service, recommending route changes, and community outreach); *Advisory Opinion 03-016* (former County employee could perform accounting work for company although duties as a public employee included budget work).

- B. Mr. Roosevelt cannot accept employment with the cable provider even if he had vehemently opposed renewing its franchise because **significant participation** means making a decision, rendering advice, investigating, or taking similar action as a public employee. It ordinarily does not include program oversight or budget review or adoption. § 19A-13(c).
- C. Mr. Roosevelt cannot accept employment with the cable provider to act as a liaison between the cable company and Fairfax County. For one year after leaving County employment, a former employee must not be employed by a person or business if the employee **significantly participated** during the previous 3 years in regulating—or in a contractual transaction with—that person or business. § 19A-13(b).

Accepting Gifts

VII. The Case of Ms. Adams' Award

- A. Ms. Adams can accept the invitation if it's worth less than \$50. General Rule: An employee must not accept a gift from a person if the employee knows that the person owns or operates a business regulated by the employee's agency. § 19A-16(c)(3). But an employee may accept a gift from an "interested person" if it is for meals and beverages from the same person under \$50 per year. § 19A-16(d)(1). Remember, just because you can doesn't mean you should.

- B. Ms. Adams can accept the ceremonial plaque. An employee may accept an award from an "interested person" that is ceremonial in nature if the resale value of the award is \$100 or less and the award commemorates an achievement associated with the employee. § 19A-16(d)(2). An employee may also accept items of personal property, other than cash, worth less than \$10. § 19A-16(d)(3). Remember, just because you can doesn't mean you should.
- C. Ms. Adams could not accept the invitation to the banquet or the award if they are offered for Ms. Adams' services on the Fire and Rescue Commission. Section 19A-14(a) provides that a public employee must not intentionally use the prestige of office for private gain or the gain of another. An employee violates that section by accepting remuneration for any service directly and immediately related to that employee's governmental activities. *Advisory Opinions 02-011, 03-010, & 03-0-11.*

Soliciting Gifts

VIII. The Case of Miles Standish's Son's Baseball Team

- A. The ethics law prohibits Miles Standish from seeking donations from his fellow Commissioners. A public employee cannot solicit a gift in the work place or during work hours. § 19A-16(a)(2).
- B. The ethics law prohibits a public employee from soliciting a gift from any person or business that is regulated by, or does business with, the County agency with which the employee is affiliated, except an employee may solicit a gift for a charitable organization if the employee does not primarily solicit from entities that are regulated by, or do business with, the County agency with which the employee is affiliated or from subordinates. §§ 19A-16(a)(1)(B), 19A-16(b)(2). An employee may solicit from other employees during official work hours for a charitable drive that is approved by the County Executive when the solicitation is part of the employee's work duties. Certain other fundraising as part of official duties can be established by Executive Order. § 19A-16(b)(3).

Prestige of Office

IX. The Case of Mr. Bonaparte's Sales Campaign

Mr. Bonaparte cannot use his public employment to advance his outside employment. An employee must not intentionally use the prestige of the employee's office for private gain or the gain of another. § 19A-14(a).

Political Activities

X. The Case of Ms. Anthony's Campaign Activities

Ms. Anthony may support the campaign of S. Colbert for Congress. She may not use a database of email addresses of citizens that she has developed from her role as a Member of the South County Advisory Board for campaign purposes.

Financial Disclosure

XI. The Case of Ms. Rockefeller's Disclosure

Yes, Ms. Rockefeller must report her husband's business holdings even if she has no control over them. The financial disclosure statement requires an employee to provide various types of information regarding the holdings and debts of an **immediate family** member, which includes a spouse, regardless of whether the employee controlled that interest. One would reasonably expect a spouse to care deeply about the other spouse's holdings and debts even in the absence of any formal ownership or control, given the obviously close and personal nature of a spousal relationship. This "caring," in and of itself, could create a conflict of interest or be manipulated by others. This does not necessarily hold true for a public employee's other **relatives**. Thus, a public employee must also provide some of this same information for relatives (a broader category) only if the employee (1) controlled that relative's interest and (2) in the performance of official duties, could affect that relative's interest. § 19A-20. *Advisory Opinion No. 03-020*.

Procedure

XII. The Case of Mr. Capone's Citizenship Challenge

- A. Mr. Capone cannot ask for an advisory opinion concerning the actions taken by Mr. Kelley. A person subject to the Ethics law may ask the Ethics Commission for an advisory opinion on the application of the Ethics law to that person. Also a supervisor can ask for an advisory opinion about a subordinate. § 19A-7(a).
- B. Mr. Capone can file a complaint with the Ethics Commission concerning Mr. Kelley's conduct. Any person may file a complaint with the Ethics Commission. The complaint must allege facts under oath that, if true, would constitute a violation of the Ethics law. § 19A-10.
- C. The Ethics Law does not require Mr. Capone to file a complaint against Mr. Kelley. The Ethics law does not require a public employee to report a violation of the Ethics law. But § 33-10 encourages all employees to report incidents of wrongdoing. This County "Whistleblower" law protects employees from retaliation for reporting incidents of wrongdoing.

Public Ethics Law Quick Reference: Restrictions

[This is a brief summary of requirements. Contact the Ethics Commission with ethics questions or issues. Laws covering post-County employment, kickbacks, financial disclosure, and Commission jurisdiction and processes are not addressed here.]

Conflicts of Interest

- Do not work on matters that affect your economic interests or those of a relative (if the matter affects these interests differently from the public generally)

- Do not work on a matter where a party to the matter is:
 - An entity you or a relative have an economic interest in or are an officer, director, trustee, partner, or employee
 - A business with which you or a relative are negotiating for employment
 - Anyone with whom you or a relative have a contract
 - An entity owned by a business you or a relative has an interest in
 - A creditor or debtor who can directly affect your or a relative's interests

Prohibited Holdings

- Not more than 1% of business that negotiates, contracts or is regulated by your agency

Prohibited Employment and Outside Employment Approval

(For BCC members, publicly disclosed employment held at appointment is excepted)

- Not with any business that negotiates, contracts, or is regulated by your agency
- No employment that could reasonably be viewed as creating a bias
- All second jobs of compensated Public Employees have to be approved by the Ethics Commission

Misuse of Office

- Inappropriate use of office to gain a benefit for your self or others
- No use of County insignia or agency title for private activity
- No use of County facilities or property for personal use, except as authorized
- No hiring or advocating for the employment of a relative
- No coercion of other employees in political activities
- No advising parties where County has an adverse interest (except as law allows)
- No disclosing confidential information
- Where decision is made on the basis of a record, decision-makers may consider only information on the record; information received off record must be tracked.

Montgomery County Ethics Commission

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Solicitation of Gifts

- Not from those doing business with or are regulated by your agency
- Not from a subordinate
- Not during work hours or at a County agency
- Not while uniformed or identifiable as a County employee
- Not for your own benefit unless solicitation is approved by Ethics Commission
- Not with intent of affecting or offering to affect action by County agency

-Exceptions to Solicitation Prohibitions

- When charitable drive is approved by the County Executive
- To charitable organizations if not primarily from persons doing business with or regulated by employee's agency or from subordinates
- Pursuant to an order printed in the County Register
- As an elected official to a charity if financial disclosure reports solicitation

Acceptance of Gifts

- Not from lobbyists on matters that could be considered by your agency
- Not from those doing business with or regulated by your agency
- Not from anyone with economic interests that could be substantially (and not just as a member of the public) affected by the performance of your duties

-Exceptions to Acceptance Prohibitions

- Meals and beverages worth \$50 per year from same source
- Ceremonial gifts worth less than \$100, if for employee achievement
- Trinkets worth less than \$10
- Reasonable food, lodging and travel for speaking, participation on a panel
- Certain gifts to elected officials as a courtesy to the office
- Informational items with resale value of less than \$25
- Gifts from a relative
- Honoraria or Awards for Achievement (recommend ethics review)
- Unsolicited gifts to a County agency

-What to do with unacceptable gifts that have been received

- Report gift if required pursuant to financial disclosure requirements and
- Return the gift to the donor, or
- Transfer the gift to the County
- If perishable, may be transferred to a charitable or educational organization with which the employee has no official position

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Post-Employment Requirements of Montgomery County's Public Ethics Law for Members of Boards, Commissions and Committees

Members of Boards, Commissions, and Committees (BCCs) are considered Public Employees for purposes of the County's Public Ethics Law and, therefore, are subject to several requirements concerning conflicts of interest and misuse of public office for private gain. Among the restrictions imposed by the ethics law are those on certain post-employment activities related to work performed as an employee with the County.

Employees should be mindful of the County's conflict of interest restriction when applying for or negotiating for a post-County position: an employee may not work on a matter involving a party with whom the employee is negotiating for or has an arrangement for employment. So, if your BCC is considering a matter involving a particular entity, it would be a violation to be negotiating with that entity while working on the matter. (An employee might be able to be recused from the matter or obtain a waiver of the restriction from the Ethics Commission to comply with law.)

10 Year Bar

The Public Ethics Law prohibits a former public employee from working on or assisting a party on a specific matter, like a case, contract, application, or similar matter for ten years after the employee significantly participated in the matter while an employee. So if a BCC member worked on a decision to issue a contract or grant to a particular entity, it would be a violation if that person, after leaving service and becoming a former public employee, were to work on or assist a party in connection with the contract or grant in the ten years after working on the matter as a public employee of the County.

1 Year Bar (applicable to compensated positions only)

A public employee may not, for one year after leaving compensated County service, enter into an employment agreement with a person or business where the employee significantly participated on behalf of the County in procurement or contractual activity concerning the person or business or in regulating the person or business. The prohibition only applies where the significant participation occurred in the previous three years.

Note

In considering whether either of the post-employment bars applies, an employee who is thinking about leaving County service to work for an entity that has done business with the BCC where the employee worked should note that certain terms used in the law, such as "specific matter" and "significant participation" are terms of art and have particular meanings under the law. **Employees are strongly encouraged to contact the Ethics Commission at 240-777-6670 with any concern about the scope of the post-employment restrictions.**