



Ethics Session:

Disclosure and Trust: Ethical Decision-Making
in Public Governance

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McGuireWoods

**DISCLOSURE, AND TRUST:
ETHICAL DECISION-MAKING IN
PUBLIC GOVERNANCE**

MACRUC

ANNUAL EDUCATION CONFERENCE

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RALEIGH, NORTH CAROLINA

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DISCLOSURE, AND TRUST: ETHICAL DECISION- MAKING IN PUBLIC GOVERNANCE

North Carolina Utilities Commission

North Carolina General Statutes § 62-10(i):

The standards of judicial conduct provided for judges in Article 30 of Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

THE NORTH CAROLINA CODE OF JUDICIAL CONDUCT

As Adopted by Order of the Supreme Court of North Carolina on January 31, 2006 and Amended by Order of the Supreme Court of North Carolina on November 6, 2015

Preamble

An independent and honorable judiciary is indispensable to justice in our society, and to this end and in furtherance thereof, this Code of Judicial Conduct is hereby established. A violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings pursuant to Article 30 of Chapter 7A of the General Statutes of North Carolina. No other code or proposed code of judicial conduct shall be relied upon in the interpretation and application of this Code of Judicial Conduct.

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Canon 3

A judge should perform the duties of the judge's office impartially and diligently.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

C. Disqualification.

(1) On motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where:

(a) The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) The judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) The judge knows that he/she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;



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West Virginia Code § 24-1-3

WVPSC continued; Membership; Chairman:

- **No utility ties:** A commissioner may not be employed by, hold an official relationship with, own stocks or bonds in, or be otherwise pecuniarily interested in a regulated public utility.
- **No political activity while serving:** A commissioner may not be a candidate for public office, hold public office, or be a member of a political committee while serving.
- **No gifts or favors from regulated entities:** A commissioner may not receive any pass, free transportation, or other thing of value, directly or indirectly, from a regulated utility or motor carrier.
- **Violation can lead to removal:** The Governor may remove a commissioner for violating these statutory ethics restrictions.





West Virginia Governmental Ethics Act

Applies broadly to **all public officials and public employees** in state boards, agencies, departments, and commissions, which includes WVPSC commissioners.

- Use of office or the prestige of office for private gain;
- Gifts;
- Nepotism
- Restrictions on financial interests in public contracts;
- Improper disclosure or use of confidential information; and
- Post-employment restrictions in particular matters and before former agencies.
- Administered by West Virginia Ethics Commission.

Avoiding impropriety and *the appearance of impropriety.*

English common law; Judicial Code of Ethics

WV House Bill 2555 – “Because the nature of the duties of the commission are quasi-judicial in nature, and to preserve public confidence in the impartiality of the commission, the West Virginia rules of judicial conduct are applicable to commission members unless those rules create a conflict with the commission's statutory duty.”





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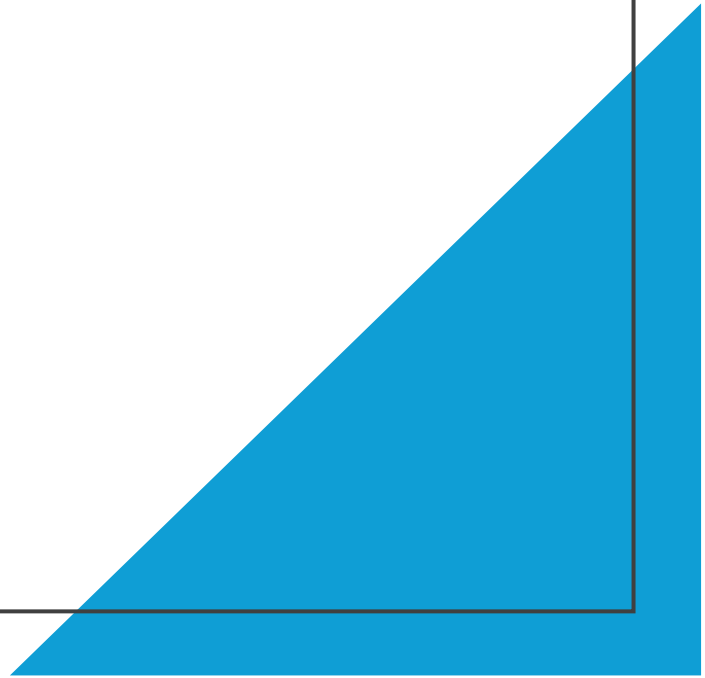
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Stevens & Lee

Pennsylvania Statutory
Ethics Language

MACRUC Conference

Gladys Brown Dutrieuille, Chair Emeritus PA PUC



PA State Ethics Act

- **§ 1103. Restricted activities.**
- **(a) Conflict of interest.** No public official or public employee shall engage in conduct that constitutes a conflict of interest.
- **(b) Seeking improper influence.** No person shall offer or give to a public official, public employee or nominee or candidate for public office or a member of his immediate family or a business with which he is associated anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment based on the offeror's or donor's understanding that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.
- **(c) Accepting improper influence.** No public official, public employee or nominee or candidate for public office shall solicit or accept anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment, based on any understanding of that public official, public employee or nominee that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.

PA State Ethics Act

- **§ 1103. Restricted activities.**

(j) Voting conflict. Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order or ordinance, the following procedure shall be employed. Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has abstained from voting as a result of a conflict of interest and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.

PA State Ethics Act – Conflict of Interest

- **"Conflict" or "conflict of interest."** Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

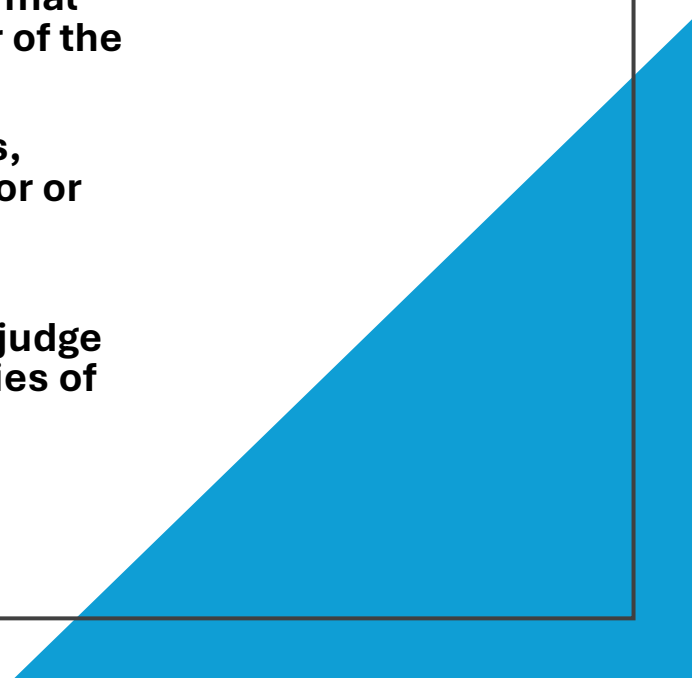
PA Public Utility Code

- **§ 319. Code of ethics.**
- **(a) General rule. Each commissioner and each administrative law judge shall conform to the following code of ethics for the Public Utility Commission. A commissioner and an administrative law judge must:**
- **(1) Avoid impropriety and the appearance of impropriety in all activities.**
- **(2) Perform all duties impartially and diligently.**
- **(3) Avoid all ex parte communications prohibited in this part.**
- **(4) Abstain publicly from expressing, other than in executive or public session, his personal views on the merits of a matter pending before the commission and require similar abstention on the part of commission personnel subject to his direction and control.**

Section 319 (Continued)

- **(5) Require staff and personnel subject to his direction to observe the standards of fidelity and diligence that apply to the commissioner and administrative law judge.**
- **(6) Initiate appropriate disciplinary measures against commission personnel for unprofessional conduct.**
- **(7) Disqualify himself from proceedings in which his impartiality might be reasonably questioned.**
- **(8) Inform himself about his personal and fiduciary interests and make a reasonable effort to inform himself about the personal financial interests of his spouse and children.**

Section 319 (Continued)

- **(9) Regulate his extra-curricular activities to minimize the risk of conflict with his official duties. He may speak, write or lecture and any reimbursed expenses, honorariums, royalties, or other moneys received in connection therewith shall be disclosed annually. Such disclosure statement shall be filed with the secretary of the commission and shall be open to inspection by the public during the normal business hours of the commission during the tenure of the commissioner or of the administrative law judge.**
 - **(10) Refrain from solicitation of funds for any political, educational, religious, charitable, fraternal or civic purposes, although he may be an officer, director or trustee of such organizations.**
 - **(11) Refrain from financial or business dealing which would tend to reflect adversely on impartiality, although the commissioner or administrative law judge may hold and manage investments which are not incompatible with the duties of his office.**
 - **(12) Conform to such additional rules as the commission may prescribe.**
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Ethics Requirements for Kentucky Public Service Commissioners



TEAM 
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Qualifications for Kentucky PSC Commissioners

- Two must be an attorney that has practiced in KY for at least 7 years
- Three must have experience in relevant fields such as utility regulation, accounting, engineering etc.
- No more than two commissioners can have the same occupation.
- No more than 3 commissioners can be from the same political party.
- Chair is elected by vote of the Commissioners for a 4 year term and labels and the chair as the chief executive officer.
- Chair may then designate a Vice Chair (currently the governor makes that designation).
- Limits Commissioners to 3 full terms.
- Commissioners can not serve on any other regulatory bodies.

Prohibited Activities

- Seeking employment or contracting services for themselves by the use or attempted use of the public servants's office or position.
- Influencing decision within the state agency in matters involving family members or others with a personal relationship.
- Use of time, equipment, personnel, facilities, or other state resources for private business purposes.
- Uses state time, equipment, personnel, facilities, or other state resources for political campaign purposes.
- Uses state time, equipment, personnel, facilities, or other state resources for personal, prurient interests.

Prohibited Activities (continued)

- Solicit, sell to, or otherwise engage in a financial transaction with an immediate subordinate or a person the employee directly supervises, or with a person or business that is doing business with or is regulated by the state agency by which the employee is employed, if the economic benefit to the public servant is greater than \$100 in a single calendar year.
- Negotiate for future employment with a person or business that does business with or is regulated by the agency for which he or she works if the public servant is directly involved in matters regarding the prospective employer, unless the public servant abstains from direct involvement in matters regarding the prospective employer and the public servant discloses the abstention in writing to his or her appointing authority before entering into any form of negotiations for future employment.



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