

# ETHICS AND THE GENERAL ASSEMBLY

## Office of Legislative Legal Services

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### I. Ethics Laws Guiding Legislators and their Staff

- A. Who is the "client"?
  - 1. Members of the General Assembly
  - 2. Legislative Staff as the client *and* advisor
- B. What is the law on ethics for the General Assembly and its staff?

#### 1. COLORADO CONSTITUTION

<http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=>

- a. **Article V, section 43:** *Requires that a member of the General Assembly who has a "personal or private interest" in pending legislation to disclose the fact of such interest and may not vote on the legislation.*
- b. **Article V, section 29:** *Prohibits a member or officer of any department of government from being interested in any way in any contract for facilities or supplies used by the General Assembly.*
- c. **Article V, section 40:** *Prohibits a member of the General Assembly from offering or promising his/her vote or influence in consideration or on condition that another member will give his/her vote or influence on other legislation (bribery).*
- d. **Article XII, section 6:** *Prohibits a member of the General Assembly (or civil officer) from soliciting, demanding, or receiving, directly or indirectly, from any company, corporation, or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment or of personal advantage or promise thereof, for his vote, official influence or action, or for withholding the same. (bribery).*
- e. **Article XXIX (aka "Amendment 41"):** *Establishes gift bans applicable to public officers, members of the General Assembly, local government officials, and government employees (and their spouse or dependent child) and a "revolving door" provision applicable to statewide elected officeholders and members of the General Assembly. Also creates the Independent Ethics Commission.*

## 2. STATUTORY PROVISIONS

<http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=>

a. **Reporting and Disclosure Requirements:** §§24-6-202 and 24-6-203, C.R.S. *Note: In addition to the disclosure and reporting requirements set forth in these sections, section 24-6-203 (3.5), C.R.S. also prohibits the receipt of a gift or money or an in-kind gift with a value in excess of \$50 for the purpose of defraying any expense related to official duties.*

b. **Standards of Conduct:** §§24-18-101, C.R.S., et seq.

i. "Code of Ethics"

- **Public trust:** Provides that the holding of public office or employment is a *public trust* created by the confidence which the electorate reposes in the integrity of public officers, including the members of the General Assembly.

- **Rules of conduct:** Proof beyond a reasonable doubt of commission of any of the enumerated acts is proof that the actor has breached his fiduciary duty and the public trust. §24-18-106]

- **Ethical principles:** Sets forth guidelines for members of the General Assembly to help determine whether or not conduct is ethical (impede independence of judgment; effect of his participation on public confidence in integrity of the GA; whether participation likely to have significant effect on the disposition of the matter). *Note: This section identifies that there is no conflict-of-interest situation if legislation the member is to vote on affects the entire membership of a class.*

- **Board of Ethics for the General Assembly:** Creates a board of ethics consisting of 4 members of the General Assembly who, upon request of a member, issue advisory opinions relating to members' conduct and standards of conduct.

ii. Proscribed Acts Related to Contracts and Claims

- §24-18-201, C.R.S. Prohibits a member of the General Assembly from being interested in any contract made by them in their official capacity.

c. **Independent Ethics Commission:** §24-18.5-101, C.R.S. *Establishes a 5- member commission to hear complaints, issue findings, and assess penalties on ethics issues. Also issue advisory opinions and letter rulings on ethics issues for all governmental employees and public officers.*

d. **Colorado Criminal Code:** Article 8 of title 18, C.R.S.

- Compensation for past official behavior, 18-8-303, C.R.S.
- Soliciting unlawful compensation, 18-8-304, C.R.S.
- Failing to disclose a conflict of interest, 18-8-308, C.R.S.
- First degree official misconduct, 18-8-404 [cl. 2 misdemeanor]
- Second degree official misconduct, 18-8-405[cl1 petty offense]

### 3. RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES

<http://www.leg.state.co.us/clics/clics2008a/cslFrontPages.nsf/SplashRules?OpenFrameSet>

a. **Article V, section 12 of Colorado Constitution:** authorizes the General Assembly through its rule-making power to adopt rules providing for punishment of its members for contempt or disorderly behavior in its presence and to enforce obedience to its process.

b. **Senate Rules - Ethics:**

- SR 17 (c) - Conflict of Interest: Requires a senator having a personal or private interest in any pending question or bill to disclose such fact and not vote thereon
- SR 41 - Ethics: Establishes guidelines for determining when a Senator has a **conflict of interest** and prohibits Senators from certain acts that constitute **undue influence**.
- SR 43 - Senate Committee on Ethics: Establishes procedure for creating a Senate ethics committee and for filing and handling ethics complaints filed by any person with knowledge of misconduct involving legislative duties by a Senator.

c. **House Rules - Ethics:**

- HR 21 - Conflict of Interest: Requires that a member who has an immediate personal or financial interest in any bill or measure proposed or pending before the GA shall disclose the fact and not vote.
- HR 49 - House Committee on Ethics: Establishes procedure for creating a House ethics committee and for filing and handling ethics complaints filed by any person with knowledge of misconduct involving legislative duties by a House member.

d. **Joint Rules - Ethics:**

- JR 42 - Member Interest in Bill: Specifies that a member shall be considered to have a personal, private, or financial interest in a pending bill, measure, or question if the passage or failure of the legislation will result in the member deriving a direct financial or pecuniary benefit greater than any such benefit derived by or shared by other persons in the member's

profession, occupation, industry, or region.

#### 4. OTHER CONSIDERATIONS APPLICABLE TO MEMBERS OF THE GENERAL ASSEMBLY

- a. *Member of a class*
- b. *Citizen legislature*
- c. *Appearance of impropriety*

## II. Considerations for Formulating an Ethics Policy

### A. *Existing Policies, Guidelines, Rules, and Applicable Law*

- a. *Existing law.* What is the framework of existing federal and state law, including criminal law, that is applicable to your profession/credentialing?
- b. *Existing policy or guidelines.* Is there an existing policy or guidelines already in existence for the organization? If so, determine whether the goal is to amend, supplement, or replace the existing policy or guidelines. If the goal is to supplement or amend, determine how the different policies/guidelines should interact together.

B. ***Flexibility: Rules vs. Guidelines.*** Should an ethics policy set forth *rules*, the violation of which may subject an individual to prescribed penalties or should it only establish *guidelines* to aid the individual in conducting his or her behavior in a manner consistent with overarching professional ethics goals? Furthermore, how tightly worded should the policy be? Should it allow for discretion by the body entrusted with enforcing the policy or should it be more specific and directive?

### C. ***Oversight body.*** Who or what is the enforcing body?

- a. Should there be a "standing" ethics commission or committee or should one be appointed ad hoc each time a situation arises?
- b. Should employees be self-regulated by a body within the organization or profession or should a body outside the organization or profession be employed?
- c. How should such a body be notified of possible violations? By any person with knowledge? By the body itself who is policing?
- d. What should be the jurisdiction of the oversight body if there are allegations or complaints involving alleged violations of the criminal code or other laws beyond the organization's ethics policy or guidelines? Should the body be

authorized to issue advisory opinions?

D. **Confidentiality.** Should complaints be maintained confidential? What if the enforcing body rejects a complaint as unsubstantiated? Should the *entire* process be maintained confidential?

E. **The process.** There are multiple considerations in developing a process for the enforcement of ethics violations. Here are a few:

- Who has standing to "file" a complaint?
- What should be the statute of limitations, if any?
- How do you insure due process for the individual? (Notice to the individual, opportunity to confront accuser, opportunity to present witnesses, and opportunity to be represented in an evidentiary hearing)
- Who should "prosecute" the case, if anyone or any body?
- Who should be charged with fact finding or investigating?
- Should there be a preliminary investigation prior to proceeding to a full hearing?
- What timelines, if any, should be established to insure prompt resolution?
- What burden of proof should be applied?

F. **Penalties.** What penalties should be established and who should assess those penalties?

G. **Roll-out.** Educate individuals in the organization who will be subject to the new policy.