

## PUC Statutes on Conflict of Interest, Standards of Conduct, *ex parte* Communications and Disqualification

### 40-2-102. Oath - qualifications

---

Each commissioner, before entering upon the duties of his office, shall take the constitutional oath of office. No person in the employ of or holding any official relation to any corporation or person, which said corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of commissioner or be appointed or employed by the commission; but if any such person becomes the owner of such stocks or bonds or becomes pecuniarily interested in such corporation otherwise than voluntarily, he shall divest himself of such ownership or interest within six months; failing to do so, his office or employment shall become vacant.

### 40-6-122. Ex parte communications - disclosure

---

(1) Commissioners and administrative law judges shall file memoranda, in accordance with this section, of all private communications to or from interested persons concerning matters under the commissioners' or judges' jurisdiction.

(2) For purposes of this section, "interested person" means any person or entity, or any agent or representative of a person or entity:

- (a) Whose operations are within the jurisdiction of the commission; or
- (b) Who has participated in a proceeding before the commission within one year prior to the communication; or
- (c) Who anticipates participating in a proceeding before the commission within one year after the communication.

(3) Each memorandum filed pursuant to subsection (1) of this section shall set forth the time and place at which the communication was made, the persons who were present at that time and place, a statement of the subject matter of the communication, other than proprietary information, and a statement that the subject matter of the communication did not relate to any pending adjudicatory proceeding before the commission. It shall not be necessary for the memorandum to be prepared by the commissioner or judge, but it shall be signed or otherwise authenticated by the commissioner or judge, whose signature or authentication shall constitute a certificate by such commissioner or judge that the memorandum is complete and accurate. All such memoranda shall be filed with the director of the commission, who shall keep them on file and available for public inspection for a minimum of three years after their submission.

(4) Any public utility may request that the commission conduct a public meeting at which communications otherwise subject to this section may be made without the necessity of filing memoranda. The commission shall adopt reasonable rules and regulations to govern such requests. In addition, the commission may adopt such other rules as are necessary and proper to govern ex parte communications generally.

(5) As used in this section, an "adjudicatory proceeding" does not include a rule-making proceeding or discussions on pending legislative proposals.

## 40-6-123. Standards of conduct

---

(1) Members and staff of the commission shall conduct themselves in such a manner as to ensure fairness in the discharge of the duties of the commission, to provide equitable treatment of the public, utilities, and other parties, to maintain public confidence in the integrity of the commission's actions, and to prevent the appearance of impropriety or of conflict of interest. The standards set forth in this section apply at all times to the commissioners, to their staff, including administrative law judges, and to parties under contract with the commission for state business.

(2) The commissioners, staff who act in an advisory capacity to the commissioners, and administrative law judges shall refrain from financial, business, and social dealings that adversely affect their impartiality or interfere with the proper performance of their official duties.

(3) Neither commissioners, staff members, parties under contract for state work, or members of the immediate families of such persons shall request or accept any gift, bequest, or loan from persons who appear before the commission; except that commissioners and staff members may participate in meetings, conferences, or educational programs which are open to other persons.

(4) Commissioners shall not lend the prestige of their office to advance the private interests of others, nor shall they convey the impression that special influence can be brought to bear upon them.

(5) Commissioners and presiding administrative law judges shall not own any stock, securities, or other financial interest in any company regulated by the commission.

(6) Violation of this section by a commissioner shall be grounds for the immediate removal of such commissioner by the governor.

## 40-6-124. Disqualification

---

(1) Commissioners and presiding administrative law judges shall disqualify themselves in any proceeding in which their impartiality may reasonably be questioned, including, but not limited to, instances in which they:

(a) Have a personal bias or prejudice concerning a party;

(b) Have served as an attorney or other representative of any party concerning the matter at issue, or were previously associated with an attorney who served, during such association, as an attorney or other representative of any party concerning the matter at issue;

(c) Know that they or any member of their family, individually or as a fiduciary, has a financial interest in the subject matter at issue, is a party to the proceeding, or otherwise has any interest that could be substantially affected by the outcome of the proceeding; or

(d) Have engaged in conduct which conflicts with their duty to avoid the appearance of impropriety or of conflict of interest.

## Department of Regulatory Agencies

### Affidavit of Independence

I have read §§18-8-308, 24-18-(101-113), 24-18-(201-205), 24-34-402.5(1)(b) and 24-50-(116-117), C.R.S., concerning standards of performance and conduct and prohibited activities of employees.	Agree	Disagree
I have read the Colorado Department of Personnel Rules, Chapter 1.	Agree	Disagree
I have read the Colorado Department of Regulatory Agencies' policy regarding Family/Work Relations, 2010-DORA-HR-001 and have made appropriate disclosures, if needed.	Agree	Disagree
I have read the Department of Regulatory Agencies' policy 2010-DORA-Gen-007; Conflict of Interest. I have made appropriate disclosures, if needed, including that I have an affirmative duty to disclose to my appointing authority any marital or familial relationships that could give rise to the appearance of impropriety.	Agree	Disagree
I am aware of the fact that an employee of the Department of Regulatory Agencies must maintain independence in both appearance and fact.	Agree	Disagree
I understand that according to Department policy a conflict of interest is presumed to exist when circumstances are such that a reasonable individual would be led to believe that my ability to make a fair and honest judgment in the public interest is or would be impaired.	Agree	Disagree
I am not engaged in any unapproved outside employment or any outside employment that would constitute or give the appearance of a conflict of interest.	Agree	Disagree
I am not aware of any circumstances regarding myself or my immediate family or household members that would constitute a conflict of interest.	Agree	Disagree
To the best of my knowledge, I am in compliance with the laws, regulations and standards cited above.	Agree	Disagree

Print Name

Signature

Date

NOTE: If "Disagree" is circled, attach appropriate explanation.

**§18-8-308 - Failing to disclose a conflict of interest.** (1) A public servant commits failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction without having given seventy-two hours' actual advance written notice to the secretary of state and to the governing body of the government which employs the public servant of the existence of a known potential conflicting interest of the public servant in the transaction with reference to which he is about to act in his official capacity.

(2) A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

(3) Failing to disclose a conflict of interest is a class 2 misdemeanor.

**§24-18-(101-113) Code of Ethics**

**Prescribed Acts Related to Contracts and Claims**

**§24-18-201 - Interests in contracts.** (1) Members of the general assembly, public officers, local government officials, or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment. For purposes of this section, the term: (a) "Be interested in" does not include holding a minority interest in a corporation. (b) "Contract" does not include: (I) Contracts awarded to the lowest responsible bidder based on competitive bidding procedures; (II) Merchandise sold to the highest bidder at public auctions; (III) Investments or deposits in financial institutions which are in the business of loaning or receiving moneys; (IV) A contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than ten percent of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period. (V) A contract with respect to which any member of the general assembly, public officer, local government official, or employee has disclosed a personal interest and has not voted thereon or with respect to which any member of the governing body of a local government has voted thereon in accordance with section 24-18-109 (3) (b) or 31-4-404 (3), C.R.S. Any such disclosure shall be made: To the governing body, for local government officials and employees; in accordance with the rules of the house of representatives and the senate, for members of the general assembly; and to the secretary of state, for all others.

**§24-18-202 - Interest in sales or purchases.** Public officers and local government officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

**§24-18-203 - Voidable contracts.** Every contract made in violation of any of the provisions of section 24-18-201 or 24-18-202 shall be voidable at the instance of any party to the contract except the officer interested therein.

**§24-18-204 - Dealings in warrants and other claims prohibited.** State officers, county officers, city and county officers, city officers, and town officers, as well as all other local government officials, and their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, city and county, city, or town warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city and county, city, or town thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, or clerk, and evidences of the funded indebtedness of such state, county, city and county, city, or town.

**§24-18-205 - Settlements to be withheld on affidavit.** (1) Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part 2 shall suspend such settlement or payment and cause such officer to be prosecuted for such violation by the district attorney of the appropriate jurisdiction. (2) If there is judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

**§24-34-402.5 - Unlawful prohibition of legal activities as a condition of employment.** (1) It shall be a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours unless such a restriction: (a) Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer; or (b) Is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest. (2) (a) Notwithstanding any other provisions of this article, the sole remedy for any person claiming to be aggrieved by a discriminatory or unfair employment practice as defined in this section shall be as follows: He may bring a civil suit for damages in any district court of competent jurisdiction and may sue for all wages and benefits which would have been due him up to and including the date of the judgment had the discriminatory or unfair employment practice not occurred; except that nothing in this section shall be construed to relieve such person from the obligation to mitigate his damages. (b) The court shall award the prevailing party in such action court costs and a reasonable attorney fee.

**§24-50-116 - Standards of performance and conduct.** Each employee shall perform his duties and conduct himself in accordance with generally accepted standards and with specific standards prescribed by law, rule of the board, or any appointing authority.

**§24-50-117 - Prohibited activities of employees.** No employee shall engage in any employment or activity which creates a conflict of interest with his duties as a state employee. The board shall promulgate general rules on incompatible activities, conflicts of interest, and employment outside the normal course of duties of state employees.