



ETHICS CODE

Presented by the Office of Inspector General

CONFLICT OF INTERESTS

IC 4-2-6-9 and 4-2-6-10.5

Tiffany Mulligan

Chief Legal Counsel



- **Conflict of Interests rules**

- Goal is to ensure that your outside interests do not hinder your ability to perform your duties for the State and that decisions are based on what is in the best interest of the State

- **Two main rules:**

1. IC 4-2-6-9 – Regarding Decisions and Votes
2. IC 4-2-6-10.5 – Regarding Contracts



- **IC 4-2-6-9 – COI; Decisions and Votes**

- Prohibits you from participating in a decision or vote, or matter related to decision or vote, if any of the following have a financial interest in the decision or vote:
 - you
 - your immediate family member
 - business organization in which you are an employee, officer, director, member, partner, trustee
 - business organization in which you are negotiating employment



- IC 4-2-6-9 – COI; Decisions and Votes
- If you identify a potential conflict of interest, you must:
 - Notify your appointing authority and ethics officer in writing AND
 - File a disclosure statement with our office OR get a Formal Advisory Opinion from State Ethics Commission



- IC 4-2-6-10.5 – COI; Contracts

- Prohibits you from knowingly having a financial interest in any state contract
 - Unless –
 - You don't participate in contracting and don't have contracting responsibility for the contracting agency AND
 - You file a written disclosure with our office before the contract is executed



- **IC 35-44.1-1-4 – Criminal COI**
- Prohibits you from knowingly or intentionally having a pecuniary interest in OR deriving a profit from a contract or purchase connected with an action by the governmental entity you serve
 - Level 6 felony



SCENARIO 1

- You are a state agency employee who has been offered a job with a trade association that you often deal with in your state employment. In the past, you have signed off on contracts for the agency with the trade association, and it is likely that you will be asked by your agency to do so again.
- What do you need to do as you are considering the job offer?



SCENARIO 1

- a) Nothing – because you have not accepted the job yet so no conflict of interests exists
- b) Nothing – because you do not have a pending contract with the trade association to sign on your desk at this time
- c) Screen yourself from signing off on future contracts with the trade association by asking your coworker to perform this duty for you
- d) Send your appointing authority and ethics officer written notice of a potential conflict of interest and either seek an advisory opinion from the Ethics Commission or file a written disclosure statement with the Commission that includes a screen



SCENARIO 1

- CORRECT ANSWER: D
- You often deal with the trade association and think it is likely that you will be asked to sign off on additional contracts in the future so you have identified a potential conflict of interest
- It is not enough to screen yourself or have your agency screen you once you've identified a potential conflict of interest
- You need to provide written notice to your appointing authority and ethics officer and either seek formal advisory opinion or file a disclosure statement under IC 4-2-6-9



SCENARIO 2

- You are a part-time member of a professional licensing board. The board you sit on makes disciplinary decisions involving licensed members of your profession. You also own a company that is in the process of negotiating the purchase of a business owned by a license holder that is currently on probation with the board.
- Can you participate in votes or discussions involving the license holder's probation?



SCENARIO 2

- a) Yes – you are not a state employee; therefore, IC 4-2-6-9 does not apply to you
- b) Yes – as long as you file a disclosure with the Ethics Commission, you can vote on the license holder’s disciplinary action
- c) No – you should recuse yourself from voting on the license holder’s probation and participating in any discussions involving the license holder or his business; you should also notify your appointing authority and ethics officer in writing and file a disclosure with the Ethics Commission
- d) No – you should recuse yourself from voting on the license holder’s probation, but you do not need to do anything further



SCENARIO 2

CORRECT ANSWER: C

- The COI rules apply to you as a special state appointee
- Your outside business has a financial interest in whether your board disciplines the owner of a company your business is purchasing; therefore, IC 4-2-6-9 applies
- You should recuse yourself from voting and participating in discussions on the disciplinary actions, and you should notify your appointing authority and ethics officer in writing and file a disclosure with the Ethics Commission



SCENARIO 3

- You are a division director for a large agency. You also have an ownership interest in a software company with your spouse, who runs the day to day operations of the company. Your spouse submitted a proposal to develop a new case management system for the Office of Inspector General, and the OIG has chosen your firm for the work.
- Do you need to take any action to comply with the Code of Ethics?



SCENARIO 3

- a) Yes – as part-owner of the company, you would have a financial interest in the contract so you would need to ensure you have no contracting responsibility for the OIG and file a disclosure statement with our office before the contract is executed
- b) Yes – as part-owner of the company, you cannot have an interest in any state contract so you must tell your husband that you cannot enter into the contract with the OIG
- c) No – your husband runs the day to day operation for the software company so you are in the clear
- d) No – you have no contracting responsibility for the OIG so you do not need to do anything further



SCENARIO 3

CORRECT ANSWER: A

- Even though your spouse runs the day to day operations, you have an ownership interest in the company; therefore, you would have a financial interest in the contract with the OIG
- The company can still enter into the contract so long as you do not have contracting responsibility for the OIG and you file a disclosure statement with our office before the contract is executed



SCENARIO 4

- Same scenario as before, but now you are an employee of the OIG, the agency that wants to hire your software company, and sign off on contracts for the OIG. What actions do you need to take to comply with the Code of Ethics?



SCENARIO 4

- a) File a disclosure statement with the Ethics Commission under IC 4-2-6-9 and with the OIG before the contract is executed under IC 4-2-6-10.5
- b) Tell your spouse that you must decline to enter into the contract with your agency to avoid violating any of the Code of Ethics conflicts of interests rules and the criminal conflict of interests statute
- c) Recuse yourself from signing off on the contract
- d) None of the above

SCENARIO 4

CORRECT ANSWER: B

- Now you have contracting responsibility for the contracting agency so filing a disclosure statement with our office or recusing yourself from working on the contract is not enough
- You risk violating the Code of Ethics conflicts of interests rules and the criminal conflict of interests statute if your company enters into the contract



SCENARIO 5

- You work for a large state agency. To make some extra money, you have accepted a part-time job to provide safety training at schools through a company that has a grant through another state agency to provide such services.
- Do you need to take any actions to comply with the IC 4-2-6-9 or IC 4-2-6-10.5?



SCENARIO 5

- a) No – so long as your job does not require you to participate in decisions or votes involving the company you plan to work for
- b) No – because you do not have an ownership interest in the outside company you are working for, IC 4-2-6-10.5 does not apply
- c) No – because your outside job is tied to a grant rather than a contract with a state agency, you do not need to follow the requirements of IC 4-2-6-10.5
- d) Yes – because the salary for your outside job is directly tied to a grant through another state agency, you will need to follow the requirements of IC 4-2-6-10.5



SCENARIO 5

CORRECT ANSWER: D

- You have a financial interest in a state contract not just by having an ownership interest in a company that contracts with the State but also when your salary from an outside job is directly tied to a contract with the State
- You can still accept the salary so long as you don't have contracting responsibility for the contracting agency and you file a disclosure statement with the OIG

MOONLIGHTING AND GIFTS

IC 4-2-6-5.5 and 42 IAC 1-5-1

Matt Savage



MOONLIGHTING, IC 4-2-6-5.5

- Applies to state officers, state employees, and special state appointees
- Includes three restrictions that apply separately



State officers/employees/appointees may not knowingly:

- 1) Accept paid employment that is inherently incompatible with state job **OR** which requires recusal to extent that ability to do state job is materially impaired
- 2) Accept employment or engage in business/professional activity that requires disclosure of confidential information
- 3) Use state position to secure unwarranted privileges/exemptions



SCENARIO 1

Dwight is a DCS employee, and he is assigned to a DCS audit team that audits service providers throughout the State. One provider offers Dwight a part-time job assisting the provider with internal compliance. If Dwight accepts the job, he would be helping the provider come into compliance on the same matters that DCS audits.



May Dwight accept the part-time job?

- A) No – it is inherently incompatible with his DCS job.
- B) No – it would require Dwight to disclose confidential information.
- C) No – it would require his recusal to the extent that he could not adequately perform his DCS duties.
- D) Yes - Dwight can accept the job.



Correct Answer:

C) No – it would require his recusal to the extent that he could not adequately perform his DCS duties.

[probably]



GIFTS, 42 IAC 1-5-1

- Applies to state employees & special state appointees
 - And their spouse and unemancipated children
 - Does NOT apply to state officers
- Gift = favor, service, entertainment, food, drink, travel expenses, registration fees



GIFTS, 42 IAC 1-5-1

- Cannot knowingly accept/solicit/receive a gift from a person:
 - Who has a business relationship with your agency
 - OR**
 - Who seeks to influence you in your official capacity



GIFTS, 42 IAC 1-5-1

- “Business relationship” includes:
 - Pecuniary interest in a contract/purchase with the agency
 - License/permit requiring agency’s discretion
 - Agency’s relationship with a lobbyist
- 8 exceptions
 - Including: mementos/souvenirs of nominal value, discounts available through SPD, certain political contributions, gifts from friends/family
- Waiver, if in the public interest



SCENARIO 2

You work for a large agency that buys its paper from Dunder Mifflin Paper Company through IDOA's QPA with Dunder Mifflin. Around the holidays, a Dunder Mifflin employee drops off a complementary box of office supplies and a handwritten note thanking your agency for its business.



May your agency accept the office supplies?

- A) Yes – Dunder Mifflin does not have a business relationship with your agency because the QPA is through IDOA.
- B) No – your agency and its employees may not accept gifts from Dunder Mifflin.
- C) Yes – an exception to the gift rule applies.
- D) Yes – the gift rule does not prohibit this kind of gift to an agency.



Correct Answer:

D) Yes – the gift rule does not prohibit this kind of gift to an agency.



Correct Answer:

D) Yes – the gift rule does not prohibit this kind of gift to an agency.

BE CAREFUL AND PROCEED WITH CAUTION



SCENARIO 2

Instead of dropping off office supplies, Dunder Mifflin mails boxes of chocolates that are addressed to your agency's procurement section.



May the procurement section accept the chocolates?

- A) Yes – so long as the procurement section makes the chocolates available to all agency employees.
- B) No – unless the procurement section supervisor waives the gift rule.
- C) Yes – gifts to an agency are permitted.
- D) No – the gift is prohibited.



Correct Answer:

D) No – the gift is prohibited.



SCENARIO 3

INDOT has no prior business relationship with a traffic signal manufacturer. Pam is INDOT's lead traffic engineer, and INDOT sends Pam to the manufacturer's California headquarters to examine the traffic signals before INDOT considers purchasing the traffic signals.



May the manufacturer reimburse INDOT for Pam's travel expenses?

- A) Yes – the manufacturer does not have a business relationship with INDOT.
- B) Yes – the rule allows for reimbursement of travel expenses that are connected to official state business.
- C) No – however, the manufacturer may reimburse the Treasurer of State.
- D) No – the rule entirely prohibits reimbursement of travel expenses.



Correct Answer:

C) No – however, the manufacturer may reimburse the Treasurer of State.



SCENARIO 4

Angela is an attorney for FSSA, which contracts with WestLaw for legal research services. Angela also serves on the fundraising committee for a non-profit, and she is organizing a golf outing to raise money for the non-profit.



May Angela ask WestLaw to sponsor a hole at the non-profit's golf outing?

- A) Yes – the gift rule does not apply to gifts received by outside organizations.
- B) No – the sponsorship is considered a gift to Angela because she is a member of the non-profit.
- C) No – the rule prohibits Angela from soliciting the sponsorship on behalf of the non-profit.
- D) Yes – although Angela may not solicit gifts for her self/spouse/child, she may solicit gifts for other individuals or organizations.



Correct Answer:

C) No – the rule prohibits Angela from soliciting the sponsorship on behalf of the non-profit.

NEPOTISM

IC 4-2-6-16

Kelly Haltom



I.C. 4-2-6-16 Nepotism

- Sec. 16. (a) This chapter does not prohibit the continuation of a job assignment that existed on July 1, 2012.
- (b) As used in this section, "employed" refers to all employment, including full-time, part-time, temporary, intermittent, or hourly. The term includes service as a state officer or special state appointee.
- (c) An individual employed in an agency may not hire a relative.
- (d) Except as provided in subsection (e), an individual may not be employed in the same agency in which an individual's relative is the appointing authority.
- (e) An individual may be employed in the same agency in which the individual's relative is the appointing authority, if the individual has been employed in the same agency for at least twelve (12) consecutive months immediately preceding the date the individual's relative becomes the appointing authority.
- (f) Except as provided in subsection (e), an individual may not be placed in a relative's direct line of supervision.
- (g) An individual employed in an agency may not contract with or supervise the work of a business entity of which a relative is a partner, executive officer, or sole proprietor.
- (h) Any person within an agency who knowingly participates in a violation of this chapter is subject to the penalties set forth in section 12 of this chapter.



I.C. 4-2-6-1 Definitions

(8) "Direct line of supervision" means the chain of command in which the superior affects, or has the authority to affect, the terms and conditions of the subordinate's employment, including making decisions about work assignments, compensation, grievances, advancements, or performance evaluation.

(16) "Relative" means any of the following:

- (A) A spouse.
- (B) A parent or stepparent.
- (C) A child or stepchild.
- (D) A brother, sister, stepbrother, or stepsister.
- (E) A niece or nephew.
- (F) An aunt or uncle.
- (G) A daughter-in-law or son-in-law.

For purposes of this subdivision, an adopted child of an individual is treated as a natural child of the individual. For purposes of this subdivision, the terms "brother" and "sister" include a brother or sister by the half blood.



SCENARIO 1

- You are the contracts manager for your State agency. As the contracts manager, you supervise the work of all businesses that have contracted with your State agency. For the last three (3) years, Company A has contracted with your State agency and you have supervised their work during that time. Your daughter recently got married to Jack, an employee of Company A. Jack is not a partner, executive officer, or sole proprietor of Company A.
- Under the nepotism rule to the Code of Ethics, can you continue to supervise the contract work of Company A?



SCENARIO 1

Under the nepotism rule to the Code of Ethics, can you continue to supervise the contract work of Company A?

- A. No, because Jack is now considered your relative and you cannot supervise the work of a business entity that your agency has contracted with if they employ a relative.
- B. Yes, because you have been supervising the work of Company A at least twelve (12) months prior to your daughter and Jack getting married.
- C. Yes, because Jack is not a partner, executive officer, or sole proprietor of Company A.
- D. Both B. and C.



SCENARIO 1 ANSWER

C. Yes, because Jack is not a partner, executive officer, or sole proprietor of Company A.

- Jack would be considered your relative because he is your son-in-law under the definition of “relative” in I.C. 4-2-6-1.
- I.C. 4-2-6-16 (g) prohibits an individual employed in a state agency from contracting with or supervising the work of a business in which a relative is a partner, executive officer, or sole proprietor.
- In this scenario, Jack is not a partner, executive officer, or sole proprietor of Company A so your continued supervision of Company A’s work for your State agency is not prohibited by the nepotism rule.



SCENARIO 2

- You are a supervising manager for your State agency's Division of Finance (Division). As a supervising manager, you oversee the work of 10 employees within your unit in the Division. The other supervising manager, John, oversees the work of 10 other employees within his unit in the Division. Both you and John report to the Director of the Division.
- John has an open position within his unit and your wife would like to apply for that position. If your wife were hired to fill the position in John's unit, you would not supervise her work and would not be involved in the hiring process.
- Can your State agency hire your wife?



SCENARIO 2

Can your State agency hire your wife?

- A. No, because your wife would be considered a “relative” and relatives cannot work so closely in the same agency division.
- B. No, because you and your wife would share a supervisor (Director of the Division) and therefore you and your wife would be in the same direct line of supervision.
- C. Yes, because your wife will not be in your direct line of supervision.
- D. Yes, because you will not be involved in the hiring of your wife.
- E. Both C and D.



SCENARIO 2 ANSWER

E. Both C. (your wife will not be in your direct line of supervision) and D. (you will not be involved in the hiring of your wife)

- Your wife is your relative under the definition of “relative” in I.C. 4-2-6-1.
- I.C. 4-2-6-16 (c) prohibit an individual employed by a state agency from hiring a relative and I.C. 4-2-6-16(f) prohibits an individual from being placed in a relative’s direct line of supervision.
- In this scenario, you are not going to participating in the hiring of your wife, so I.C. 4-2-6-16(c) will not be violated if your wife is hired. Even though you and your wife will technically have a shared supervisor (Director of the Division), your wife will not be in *your* direct line of supervision, so I.C. 4-2-6-16(f) will also not be violated if your wife is hired.

However, your State agency must ensure that you never supervise your wife or have the authority to affect the terms and conditions of her employment should John ever be absent from his position or his position becomes vacant.

SCENARIO 3

- You are the hiring manager for your State agency's Division of Administration (Division). There is currently a part-time position open within the Division. The position would be supervised by a Division manager, who in return would report directly to the Director of the Division (Director). The Director has the final approval on all hires in the Division.
- Candidate A has submitted a resume to fill the open position. You know that Candidate A is the nephew of the Director, despite neither of them telling you this information. Since no one else applied for the position, you decide to hire Candidate A. The Director signs off on the hire. You extend an offer to hire to Candidate A and he accepts.
- Have you violated the nepotism rule of the Code of Ethics?

SCENARIO 3

Have you violated the nepotism rule of the Code of Ethics?

- A. No, because the nepotism rule of the Code of Ethics is applicable only to those actions between individuals considered “relatives” under the definition.
- B. No, because neither Candidate A nor the Director of the Division informed you that they were related to one another.
- C. Yes, because you knowingly hired Candidate A and placed him in the Director of the Division’s direct line of supervision knowing that the two were “relatives” under the definition.
- D. None of the above.



SCENARIO 3 ANSWER

C. Yes, because you knowingly hired Candidate A and placed him in the Director of the Division's direct line of supervision knowing that the two were considered "relatives" under the definition.

- Candidate A is the nephew of the Director of the Division and therefore would be considered a relative under the definition of "relative" in I.C. 4-2-6-1.
- I.C. 4-2-6-16 (h) states any person within an agency who knowingly participates in a violation of this chapter is subject to penalties set forth in section 12 of this chapter.
- In this scenario, you as the hiring manager *knowingly participated* in hiring a relative of an individual employed at your agency, prohibited by I.C. 4-2-6-16 (c), and you *knowingly participated* in placing an individual in a relative's direct line of supervision, prohibited by I.C. 4-2-6-16(f).



BACKGROUND INFORMATION TO SCENARIO 4

- Your State agency utilizes Knowledge Services to fill vacant clerical positions with temporary employees. Individuals selected to fill these positions through Knowledge Services are hired by Knowledge Services, but assigned to open positions within executive agencies. These individuals are not employees of the State, but rather contractors, and thus are subject to the rules that apply to individuals who have a business relationship with the State.
- Knowledge Services enables executive state agencies to either:
 - (a) select a candidate that applied to a job posting that the agency provided to Knowledge Services; or
 - (b) pre-select a candidate themselves and send the candidate's information to Knowledge Services for hire.



SCENARIO 4

- You are employed as the Chief Financial Officer for your State agency. As such, you are the highest employee in your State agency's Office of Finance (Office) and have the final approval on all matters in the Office.
- There is an open clerical position in the Office that you would like to fill utilizing Knowledge Services. You forward your stepmother's resume to the hiring manager within the Office and state in your email that you believe your stepmother would be a good candidate for the position. You do not sit in on your stepmother's interview with the hiring manager, but the hiring manager informs you that your stepmother has been selected to fill the open position.
- You forward your stepmother's name and information to Knowledge Services as the candidate the Office has selected to fill the position. You also request at that time an increase to your stepmother's starting pay rate. Your stepmother is then hired by Knowledge Services and assigned to the open clerical position in your Office.
- Have you violated the nepotism rule of the Code of Ethics?



SCENARIO 4

Have you violated the nepotism rule of the Code of Ethics?

- A. No, because your stepmother is not considered an “employee” of the state, only a contractor, and therefore the nepotism rule of the Code of Ethics does not apply to her hire or supervision.
- B. No, because your stepmother was hired by Knowledge Services, not you.
- C. Yes, because you are now in your stepmother’s direct line of supervision in the Office.
- D. Yes, because your actions do amount to hiring your stepmother.
- E. Both C and D.



SCENARIO 4 ANSWER

E. Both C. (because you are now in your stepmother's direct line of supervision in the Office) and D. (your action do amount to hiring your stepmother)

- Your stepmother is considered your relative under the definition of “relative” in I.C. 4-2-6-1.
- I.C. 4-2-6-16(f) prohibits an individual from being placed in a relative's direct line of supervision. In this scenario, you have placed your relative in the same Office in which you are the highest employee and have the final approval on all matters in that Office. Though you may never interact with your stepmother or be her direct supervisor, you are still in her direct line of supervision and have the authority to affect the terms and conditions of her employment.
- I.C. 4-2-6-16(c) prohibits an individual employed in an agency from hiring a relative. In this scenario, you have taken many steps to assist in hiring your stepmother and had the final approval in her hire and increase in starting pay rate. Though, your stepmother was technically hired by Knowledge Services, not you. So why is this then a violation?
- In a recent case with a similar fact pattern that went before the State Ethics Commission, the Commission found that these actions did amount to hiring a relative, even though the relative was technically hired by Knowledge Services.

POST-EMPLOYMENT

IC 4-2-6-11 (42 IAC 1-5-14)

Jennifer Cooper

State Ethics Director



Post-Employment Restrictions

Cooling off period (“revolving door”)

- IC 4-2-6-11(b)
- One-year
- Lobbying
- Negotiation/administration of a contract
- Regulatory/Licensing decisions

Particular Matter Restriction

- IC 4-2-6-11(c)
- Life of the matter (not limited to one year)
- Personal and substantial participation as a state worker



Particular Matters

(1) an application

(2) a business transaction

(3) a claim

(4) a contract

(5) a determination

(6) an enforcement proceeding

(7) an investigation

(8) a judicial proceeding

(9) a lawsuit

(10) a license

(11) an economic development project

(12) a public works project



Exceptions

- Cooling off period
 - Two-year exception for negotiation and administration of contract if it occurred 1) over two years before employment negotiations begin; and 2) the contract has ended
- Particular Matter
 - Term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or administrative policy or practice of general application



Application

Cooling off restriction

- What is “negotiation” of a contract?
- What is “administration” of a contract?

Particular matter restriction

- Is it a particular matter?
- What is “personal” and “substantial” participation?



SCENARIO 1

You are a state employee who served as one of several members of a committee who scored Request For Proposals (RFP) and made recommendations regarding a state contract . The recommendations were considered by an upper management team who chose Company A for the contract. This occurred several years ago and you have not had any further involvement in Company A's contract since serving on the committee that scored and made recommendations regarding the RFP. You have applied for a position at Company A and your first interview went well. You have decided you would like to accept an offer for employment if he receives one. Can you do this?



SCENARIO 1

Q: Did you negotiate this contract for purposes of the post-employment rule?

- A. Yes, you better tell Company A you absolutely cannot accept this position
- B. No, your involvement in Company A's contract could not possibly be considered part of the negotiations
- C. Yes, this could be considered part of the negotiations as the RFP scoring and recommendations were considered by the group who awarded the contract to Company A
- D. None of the above



SCENARIO 1

Correct Answer: C

Scoring an RFP and making recommendations regarding an RFP could be considered part of the negotiations of a contract.

However, the SEC has determined in recent Formal Advisory Opinions that scoring and/or making recommendations as part of a committee to another group or individual who ultimately awards and negotiates the contract does not amount to having the discretionary authority to affect the outcome of the negotiation. **Both** parts of IC 4-2-6-11(b)(2) need to be present for the cooling off restriction to apply.



SCENARIO 2

You are the individual who applied your agency head's signature to provide the final approval of the selection of Company A for a state contract. This was the only involvement you had in the contracting process. You did not review the RFP, you were not in contact with Company A throughout the contracting process and you did not make any decisions regarding the substance of the contract (work products, pay schedule, etc.) . Can you accept a position with Company A?



SCENARIO 2

Q: Is affixing the agency head's signature to a contract considered negotiation of a contract by someone in a position to make a discretionary decision affecting the outcome of the negotiation?

A: No, this is not part of the negotiation of Company A's contract; negotiations were complete before the contract arrived on your desk and this is just a formality

B. Yes, because the contracting process would not have been able to move forward but for your actions

C. Yes, because you had the discretion to question the selection of Company A by virtue of your position

D. B & C

E. None of the above



SCENARIO 2

Correct Answer: D

The SEC considered this fact pattern in Formal Advisory Opinion No. 14-I-16, and determined that an INDOT Deputy Commissioner, who approved a contract that was awarded to the consultant he wanted to work for on behalf of the Commissioner, had the discretion to question the selection of the consulting firm prior to affixing the Commissioner's signature even if he did not use such discretion. The SEC further found that the contracting process would not have moved forward but for the Deputy Commissioner's actions.



SCENARIO 3

You work for an agency that uses a vendor to provide services to individuals in your county. Contracts are handled by the central office while you work out in the field. Part of your job responsibilities include approving referrals that your supervisees make to the vendor so that the individuals they are working with can receive the services they need. These approvals are to ensure the referrals were complete and in good form (grammar, punctuation, etc.) You are interested in leaving state employment to work for the vendor.



SCENARIO 3

Q: Is approving referrals considered administration of the vendor's contract and enough to trigger the cooling off restriction?

- A. Yes, this is administration of the vendor's contract and you are in a position to make a discretionary decision about the nature of the administration as the supervisor approving referrals.
- B. No, approving the referrals is not considered administration of the vendor's contract.



SCENARIO 3

Correct answer: B

- The SEC considered this fact pattern in Formal Advisory Opinion 17-I-9.
- SEC determined that the DCS Family Case Manager supervisor was not making decisions about the nature of the administration of the contract; referrals were already contemplated by the contract. The SEC also heard testimony from the agency that all contract matters (including all decisions affecting negotiation and administration) are handled by the agency's central office.



SCENARIO 4

You left state employment two months ago. You served as an inspector for the State and since leaving you have started your own consulting firm. Company B wants to hire you to provide consulting services regarding compliance and enforcement actions that were initiated by your former agency. Several years ago you conducted multiple compliance inspections of Company B as part of your state job, but you have not had any recent interactions with them as a state inspector. You would like to accept Company B as a client of your new firm. Assuming your inspection was part of a regulatory decision that applied to Company B, is this OK under the rules?



SCENARIO 4

Q: Can you immediately accept Company B as a client under the post-employment rule?

- A) No, the cooling off period applies because you made a regulatory or licensing decision that directly applied to a person from whom you will be receiving compensation
- B) Yes, the regulatory decisions you made as part of your compliance inspections were made over a year ago
- C) Yes, you are not being hired as an employee of Company B; you are just providing services through your own company
- D) Both B & C



SCENARIO 4

Correct answer: A

Company B would still be considered an employer for purposes of the current version of the rule

Does not matter if regulatory decision was made several years ago



SCENARIO 5

Continuing this fact pattern, you decided to wait over a year from the date you left state employment to accept Company B as a client. Can you advise them on an enforcement proceeding resulting from your compliance inspection that occurred 5 years ago?

- A) Yes, you left state employment over a year ago
- B) No, the enforcement proceeding is a particular matter (likely your participation was personal and substantial if it resulted from your inspection?)
- C) No, but you can assist Company B with new enforcement proceedings
- D) Yes, your inspection was over 5 years ago
- E) Both A & D
- F) Both B & C



SCENARIO 5

Correct answer: F

- The enforcement proceeding is a particular matter
- Particular matter restriction is for the life of the matter; not limited to one year
- You can work on new matters for a new employer that were initiated after you left state employment

LEGAL & ETHICS
CONFERENCE



THANK YOU
FOR COMING