

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



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**For Office
Use Only:**

Effective Date _____ Code Number _____

Name of Agency Arkansas Ethics Commission

Department _____

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Statutory Authority for Promulgating Rules Ark. Code Ann. § 7-6-217

Rule Title: Rules on Conflicts

Intended Effective Date
(Check One)

Date

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Graham Sloan Graham.Sloan@arkansas.gov 12/19/2017
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

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Phone Number E-mail Address

Director of the Arkansas Ethics Commission
Title

12/19/17
Date

RULES ON CONFLICTS

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§ 400 Definitions

- (a) **Administrative action** – As used in these rules, the term “administrative action” means any decision on, or proposal, consideration, or making of any rule, regulation, ratemaking proceeding, or policy action by a governmental body. It does not include ministerial action.
- (b) **Business** – As used in these rules, the term “business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, receivership, trust, or any legal entity through which business is conducted.
- (c) **County government** – As used in these rules, the term “county government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a county.
- (d) **Family** – As used in these rules, the term “family” means an individual’s spouse, children of that individual or his or her spouse, or brothers, sisters, or parents of the individual or his or her spouse.
- (e) **Governmental body** – As used in these rules, the term “governmental body” means any office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof.
- (f) **Income or compensation** – As used in these rules, the term “income or compensation” means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof. It includes a payment made under obligation for services or other value received. The term “compensation” does not include anything of value presented to an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics, Sciences, and the Arts, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of the employee’s contribution to education.
- (g) **Legislative action** – As used in these rules, the term “legislative action” means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, ordinance, law, resolution, amendment, nomination, appointment, report, or other matter pending or proposed before a committee or house of the General Assembly, a quorum court, or a city council or board of directors of a municipality.

- (h) **Legislator** – As used in these rules, the term “legislator” means any person who is a member of:
1. The General Assembly;
 2. A quorum court of any county;
 3. The city council or board of directors of any municipality; or
 4. A member of a school district board of directors.
- (i) **Lobbying** – As used in these rules, the term “lobbying” means communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action.
- (j) **Municipal government** – As used in these rules, the term “municipal government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a municipality.
- (k) **Person** – As used in these rules, the term “person” means a business, individual, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.
- (l) **Public appointee** – As used in these rules, the term “public appointee” means an individual who is appointed to a governmental body. It does not include an individual appointed to an elective office.
- (m) **Public employee** – As used in these rules, the term “public employee” means an individual who is employed by a governmental body or who is appointed to serve a governmental body. It does not include public officials or public appointees.
- (n) **Public official** – (1) As used in these rules, the term “public official” means a person holding an elective office of any governmental body, whether elected or appointed to the office
(2) “Public official” includes without limitation:
- (A) A person holding an elective office of any governmental body, whether elected or appointed to the office, during the time period between the date he or she is elected or appointed and the date he or she takes office; and
 - (B) A member of a school district board of directors.
- (o) **Public servant** – As used in these rules, the term “public servant” means all public officials, public employees, and public appointees.
- (p) **Special privileges or exemption** – As used in these rules, the term “special privileges or exemption” means a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.

- (q) **State government** – As used in these rules, the term “state government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas.
- (r) **Unwarranted privileges or exemptions** – As used in these rules, the term “unwarranted privileges or exemptions” means a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.

§ 401 Confidential Information

- (a)(1) No public servant shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position which is declared by law or regulation to be confidential.
- (2) No public servant shall disclose any such information gained by reason of his or her position, nor shall he or she otherwise use such information for his or her personal gain or benefit.
- (b) No public servant shall purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the public servant’s official duties, to secure anything of material value or benefit for himself or herself or his or her family.
- (c) No member of a state board or commission or board member of an entity receiving state funds shall disclose confidential information acquired by him or her in the course of the member’s official duties or use such information to further his or her personal interests.

§ 402 Fair Treatment

- (a) No public servant shall use or attempt to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law.
- (b) No member of a state board or commission or board member of an entity receiving state funds shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

§ 403 Decision Making

- (a)(1) No member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if the member has a pecuniary interest in the matter under consideration by the board, commission, or entity.
- (2) A member of a state board or commission or board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision if the only pecuniary interest that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.
- (b) No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.

§ 404 Appearances

- (a) No legislator shall appear for compensation on behalf of another person, firm, corporation, or entity before any entity of:
 - (1) State government, if the legislator is a member of the General Assembly;
 - (2) The legislator's county government, if the legislator is a member of a quorum court;
 - (3) The legislator's municipal government, if the legislator is a member of a city council or board of directors of a municipality; or
 - (4) The legislator's school district board of directors, if the legislator is a member of a school district board of directors.
- (b) This section shall not:
 - (1) Apply to any judicial proceeding or to any hearing or proceeding which is adversarial in nature or character;
 - (2) Apply to any hearing or proceeding on which a record is made by the entity of state government, entity of county government, entity of municipal government, or school district board of directors;
 - (3) Apply to an appearance which is a matter of public record;

- (4) Apply to ministerial actions; or
- (5) Preclude a legislator from acting on behalf of a constituent to determine the status of a matter without accepting compensation.
- (c) An appearance which is a matter of public record as provided in subdivision (b)(3) of this section may be made by:
 - (1)(A) Filing a written statement within twenty-four (24) hours with the agency head of the entity of state government, entity of county government, entity of municipal government, or school district before which an appearance is sought.
 - (B) In the event that a written statement cannot be provided to the agency head prior to the meeting, telephonic notice must be given the agency head or his office; or
 - (2) Filing a quarterly statement with the agency head of the entity of state government before which an appearance is sought.
- (d)(1) A statement filed under subsection (c) of this section shall identify the client on behalf of whom the appearance is made and contain a general statement of the action sought from the governmental body.
 - (2)(A) The statements shall be retained by the agency head and shall be a matter of public record.
 - (B) If the agency head determines that the release of the client's name would be an unwarranted invasion of individual privacy or would give advantage to competitors for bidding, the agency head may withhold the name until appropriate.
- (e) No member of the General Assembly shall receive any income or compensation as defined in § 400(f) other than income and benefits from the governmental body to which he or she is duly entitled, for lobbying other members of the General Assembly by communicating directly or soliciting others to communicate with any other member with the purpose of influencing legislative action by the General Assembly.

§ 405 Reporting

- (a) A legislator who is required to take an action in the discharge of his or her official duties that may affect his or her financial interest or cause financial benefit or detriment to him, or a business in which he or she is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, partner, or employee, which is distinguishable from the effects of the action on the public generally or a broad segment of the public, shall:

- (1) Prepare a written statement describing the matter requiring action and stating the potential conflict; and
- (2)(A) Deliver a copy of the statement to the appropriate official to be filed with the statement of financial interest.
 - (B) The copy of the statement may be delivered in person by the public official, by mail, or by a person authorized by the public official to deliver the copy.
- (b) The obligation to report a potential conflict of interest under this section arises as soon as the legislator is aware of the conflict.
- (c) If the statement of financial interest filed by the legislator makes the conflict readily apparent, then no report need be filed.