

## 2 Attorney General's Office

### 2.2 Code of Ethics

<b>Author(s):</b>	<b>Deputy Attorney General Lori Linskey Division of Criminal Justice</b>
<b>Contact Person and Telephone:</b>	<b>Assistant Attorney General Greta Gooden Brown Chief, Prosecutors and Police Bureau (609) 984-2814</b>
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#### 2.2.1 Introduction

The integrity and impartiality of County Prosecutors and their employees is critical to maintaining public confidence in the criminal justice system. Public trust in the criminal justice system deteriorates whenever there is a perception that County Prosecutors or their employees are not performing their duties in an impartial, professional and unbiased manner, or that the private interests of Prosecutors influence the performance of those duties. The purpose of the Code of Ethics for County Prosecutors is to establish statewide standards of conduct for County Prosecutors and their employees and to promote public confidence in the criminal justice system.

#### 2.2.2 Authority

The Code of Ethics for County Prosecutors (“the Code”) was promulgated pursuant to the Criminal Justice Act of 1970, *N.J.S.A. 52:17B-97 et seq.*, which provides for the general supervision of the County Prosecutors by the Attorney General as the chief law enforcement officer of the State. There are also twenty opinions that have been written by the Code of Ethics Committee which provide guidance and interpretation of the Code. The Code has been endorsed by each County Prosecutor on behalf of his or her office. The duties and prohibitions included in the Code are in addition to those imposed by the Local Government Ethics Law, *N.J.S.A. 40A:9-22.1, et. seq.*, and the Conscientious Employee Protection Act, *N.J.S.A. 34:19-1, et. seq.*

The Code is applicable to every County Prosecutor and to every person who is employed by his or her Office, including, but not limited to assistant prosecutors, detectives, investigators, professionals and clerical staff. This Code is also applicable to the Director of the Division of Criminal Justice (“Director”) and his or her staff, including, but not limited to assistant attorneys general, deputy attorneys general, investigators, professionals and clerical staff. All references in this Chapter to County Prosecutors and their employees applies with equal force to the Director and his or her staff.

### **2.2.3 Enforcement**

It is the responsibility of each County Prosecutor, as well as the Director of the Division of Criminal Justice, to observe, maintain and enforce the standards of conduct set forth in the Code. If a County Prosecutor, the Director or any of their staffs become aware of conduct that violates either the Code, State, or Federal laws, the conduct must be immediately disclosed to the Prosecutor, Director or their designees, pursuant to the provisions of the Conscientious Employee Protection Act, *N.J.S.A. 34:19-1, et seq.* Persons who violate the provisions of the Code will be subject to appropriate action, including, as authorized by applicable law or contract, removal, suspension, demotion or other disciplinary action.

If a Prosecutor, the Director, or any of their staffs are unclear whether certain activities or conduct are in conformance with the Code, they must contact the Code of Ethics Committee in writing to seek clarification. The Code of Ethics Committee is Comprised of County Prosecutors, the Director and Assistant and Deputy Attorneys General. The Committee is administered by the Division of Criminal Justice. It is the responsibility of the County Prosecutor to keep records of all requests for ethics opinions. Section 2.2.5 details the procedures for requesting an ethics opinion from the Committee.

### **2.2.4 Duties and Prohibitions**

Although the Code is only eight pages long, it covers an expansive scope of duties and prohibitions. In general, the Code requires that Prosecutors and their employees ensure that they do not use their positions to obtain “unwarranted privileges, benefits or advantages for any person or to impose unwarranted burdens or advantages on any person.” *Section 4(D)*. Prosecutors and their staffs are also cautioned against using their positions to promote political interests and are required to prevent any improper use of the personnel or property resources entrusted to them, including government vehicles. *Section 4 (E), (G)*. Equally critical, is the prohibition against disclosing “any confidential information that is not available to the public and that is acquired in the course of duties or by virtue” of being publicly employed. *Section 4(H)*. All Prosecutors and their staffs also have an ethical duty to ensure that they have paid all of their financial obligations including taxes and court ordered obligations including judgments, liens and child support obligations. *Section 4(J)*.

One of the common threads found throughout the Code is the mandate that actual and apparent conflicts of interests must be avoided. Even the appearance of a conflict of interest must be avoided. It is imperative that in the case of actual conflicts, which include matters involving family members or business organizations in which they have a financial interest, a Prosecutor or an affected staff member must insulate themselves from taking any official action. *Section 4(K)*. A conflict may be avoided, in many instances, by reassigning a case within a Prosecutor's Office and taking extra precautions to insulate the individual from the conflict situation. If a conflict arises that can not easily be cured, the Prosecutor must contact the Division of Criminal Justice to request that the prosecution be superseded. This situation commonly arises when a Prosecutor previously represented a criminal defendant prior to becoming Prosecutor. *Section 4(L)*. Section 2.2.5 details the procedures for requesting that a case be superseded by the Division of Criminal Justice.

The majority of the ethical inquiries received by the Committee seek guidance on the propriety of activities that occur outside of the work place. Section 5 of the Code addresses a number of these limitations, including volunteer activities, outside business and real estate transactions. The overriding principle of Section 5 is, once again, that actual and apparent conflicts must be avoided. Prosecutors, their employees, and in some cases their immediate families, must be aware that the Code places limitations on participation in certain outside endeavors, even those that appear to be charitable. The criteria that are used to evaluate outside activities include determining whether the activity casts doubt on independence of judgment, compromises impartiality in the performance of official duties, and whether the activity will require a commitment of time or effort that might interfere with the proper performance of duties. *Section 5D*.

Many inquiries are received regarding the propriety of obtaining outside employment. The Code clearly states that, except in the performance of official duties, Prosecutors and their employees may not "practice law or engage in any other business, trade, profession or occupation, whether or not for compensation." *Section 5C*. Teaching, without compensation or for reasonable compensation, is permitted so long as it has been approved by the Prosecutor and does not violate the requirements of *N.J.S.A. 2A:158-15.1* which requires that such teaching be "part of a program of law enforcement education." *Section 5(E)(2)*.

Be aware that engaging in volunteer activities on behalf of nonprofit charitable, religious, sports or related organizations poses potential ethical issues. Many of the violations that the Committee reviews emanate from fund raising activities on behalf of these organizations. Although *de minimus* fund raising activities, such as selling candy, Girl Scout Cookies, or passing the collection plate at church are permissible, "[a]ny other fund raising is deemed to be in conflict with Section 5D of the Code and is therefore prohibited." *Code of Ethics Opinion #12*.<sup>1</sup> Serving as a Board Member in many nonprofit or charitable organizations may pose problems under the Code if the organization requires their Board Members to conduct significant fund raising. Individuals

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<sup>1</sup>See also *Code of Ethics Opinions #2 and #11*, which permit *de minimus* fund raising.

wishing to donate time to these organizations must do so in positions that do not require them to be actively involved in fund-raising.

Political activity by Prosecutors, Assistant Prosecutors, Detectives, Investigators, Agents and Office Managers is also strictly prohibited. Political Activity is defined by the Code in very broad terms and includes any endorsement of political candidates or political parties. Some of the specific prohibitions detailed in *Section 6* of the Code include displaying any political signs on ones person, home or car and making contributions to political campaigns, which includes purchasing, selling or distributing tickets to any political activity. Attendance at political functions is also strictly prohibited. *Section 6(C)*. *Code of Ethics Opinion 6* further clarifies the ban on attendance at political affairs noting that non-partisan or professional functions, such as the Conference of Mayors, are permissible, while political events, such as the Governor’s Inaugural Ball, are prohibited.

### **2.2.5 Disclosure, Reporting and Record Keeping**

On July 1<sup>st</sup> of each year and prior to assuming office, each County Prosecutor and First Assistant Prosecutor must file a *Financial Disclosure Statement for Public Employees* Form. This form must be filed with the Director of the Division of Criminal Justice and will be retained by the Director as long as the Prosecutor is in office and for five years thereafter. *Section 7(A)*.

Every Prosecutor and employee of a Prosecutor’s Office has a duty to disclose any conduct that violates the Code, or any other State and Federal Law to a designated individual within each Prosecutor’s Office. *Section 7(B)*. This duty to disclose extends to policies or practices of the Office that violate the law or any activities that are “incompatible with a clear mandate of public policy concerning the public health, safety or welfare.” *Section 7(C)*. If a Prosecutor or member of his or her staff is charged with a crime, including motor vehicle offenses that could impact the individual’s performance of official duties, the individual must report the charge to the Prosecutor, his or her designee, or in the case of a Prosecutor, to the Director of the Division of Criminal Justice. *Section 7(E)*. Prosecutors must “keep records of all disclosures, notifications, reports, approvals, waivers, requests for assistance and responses” covered by the Code. *Section 7(G)*.

Employees of a County Prosecutor who have any question regarding the propriety of any action under the Code should seek the assistance of the Prosecutor or his or her designee. Prosecutors should respond to these inquiries, but may contact the Division of Criminal Justice for assistance and clarification. *Section 7(E)*. Similarly, if a Prosecutor believes that a conflict exists that requires the supersession of a prosecution, a written request detailing the conflict should be sent to the Division of Criminal Justice.

Written ethics inquiries, as well as supersession requests, should be sent to:

Assistant Attorney General Greta Gooden Brown  
Chief, Prosecutors & Police Bureau  
Hughes Justice Complex  
P.O. Box 085  
Trenton, New Jersey 08625

Many of the inquiries received by the Code of Ethics Committee involve questions related to participation in non-profit or other community based organizations. Please enclose as much detail as possible concerning the organization or activities at issue, such as mission statements, responsibilities of board members and the scope of any fund-raising conducted by the organization. Please also note the position that the individual who is the subject of the inquiry holds within the Prosecutor's Office. After review and consideration, the Code of Ethics Committee will provide a written response outlining the basis of the Committee's determination.

### **2.2.6 Attachments – Code of Ethics and Opinions**

The following are attached to this Chapter as an addendum:

1. Code of Ethics for County Prosecutors
2. Code of Ethics Committee Opinions

# CODE OF ETHICS FOR COUNTY PROSECUTORS

## 1. AUTHORITY

This Code of Ethics has been jointly formulated by the Attorney General and the county prosecutors. It is promulgated pursuant to the *Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq.*, which recognizes the importance of public confidence in the administration of criminal justice and provides for the general supervision of the county prosecutors by the Attorney General as chief law enforcement officer of the State. This Code has been endorsed by each county prosecutor on behalf of his or her office.

## 2. PURPOSE

Integrity and impartiality of county prosecutors and the employees of their offices are critical to public confidence in our criminal justice system. Public confidence in the criminal justice system is eroded whenever the public perceives that county prosecutors or their employees are not performing their duties in an impartial, professional and unbiased manner or that the private interests of county prosecutors and their employees influence the performance of those duties. The purpose of this Code is to foster public confidence in the criminal justice system, by establishing statewide standards of conduct for county prosecutors and the employees of county prosecutors' offices. This Code prohibits conflicts that are substantial and material or that may bring government into disrepute. This Code recognizes that it is appropriate for county prosecutors, as chief law enforcement officers of their respective counties, to inform the public about crime and the criminal justice system and to express opinions on matters related to crime and the administration of criminal justice, and it is not intended to prohibit or restrict such conduct or other conduct appropriate in the normal course of government business.

## 3. APPLICABILITY

This Code is applicable to every county prosecutor and to every person who is employed by a county prosecutor's office, including but not limited to assistant county prosecutors, detectives, investigators, professionals and clerical staff. The duties and prohibitions included in this Code are in addition to those imposed by the "Local Government Ethics Law" (N.J.S.A. 40A:9-22.1 et seq.)

## 4. DUTIES AND PROHIBITIONS: IN GENERAL

- A. Every county prosecutor must observe, maintain and enforce the standards of conduct set forth in this Code.
- B. Every county prosecutor and employee of a county prosecutor's office must support the Constitution of the United States and the Constitution of the State of New Jersey and comply with all applicable laws, statutes, rules of professional conduct and

ordinances of this State and its political subdivisions and with all applicable laws and statutes of the United States.

- C. Every county prosecutor and employee of a county prosecutor's office must make official decisions and take official action on a fair and impartial basis and without regard to race, color, sex, religion, age, handicap, national origin, marital status, affectional or sexual orientation, partisan political, familial or social affiliation or other improper consideration.
- D. No county prosecutor or employee of a county prosecutor's office may use an official position to secure unwarranted privileges, benefits, or advantages for any person or to impose unwarranted burdens or disadvantages on any person.
- E. No county prosecutor or employee of a county prosecutor's office may lend the prestige of his or her office or position to advance any private or partisan political interest.
- F. No county prosecutor or employee of a county prosecutor's office may convey the impression that any person is in a special position to influence the performance of his or her duties, and no county prosecutor or employee of a county prosecutor's office may allow any person to convey the impression that he or she is in a special position to influence the performance of those duties.
- G. Every county prosecutor and employee of a county prosecutor's office must exercise all reasonable care to prevent improper use of public property and resources entrusted to him or her and no county prosecutor or employee of a county prosecutor may use public personnel, property or information to further personal or private interests or to satisfy personal or private obligations.
- H. Except as authorized or required for proper performance of duties, no county prosecutor or employee of a county prosecutor's office may disclose any confidential information that is not available to the public and that is acquired in the course of duties or by virtue of their public employment.
- I. Except as required or authorized by law, no county prosecutor or employee of a county prosecutor's office may knowingly falsify any official writing or record or alter, destroy or conceal any official writing or record or evidence.
- J. Every county prosecutor and employee of a county prosecutor's office must timely pay federal, state and local taxes owed and must promptly satisfy all final judgments, liens, decrees or similar court-ordered obligations.

- K. No county prosecutor or employee of a county prosecutor shall take official action in any matter if he or she, or a member of his or her immediate family, or a business organization in which he or she has a financial interest, has a direct or indirect personal or financial involvement that might reasonably be expected to interfere with the impartial performance of official duties or that might reasonably be expected to impair objectivity or independence of judgment.
- L. No county prosecutor or employee of a county prosecutor may knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of the acts that he or she is engaged in conduct violative of the public trust.

5. **AVOIDANCE OF ACTUAL AND APPARENT CONFLICTS: FINANCIAL INTERESTS, OUTSIDE EMPLOYMENT AND ACTIVITIES**

- A. No county prosecutor, employee of a county prosecutor, or member of the immediate family of a county prosecutor or of an employee of a county prosecutor shall have financial interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of duties in the public interest.
- B. No county prosecutor or employee of a county prosecutor's office shall engage in any transaction, business, trade, occupation or professional activity, with or without compensation, which might reasonably be expected to be in substantial conflict with the proper discharge of official duties.
- C. Except in performance of official duties and as expressly authorized in paragraph D and E of this section, no county prosecutor or employee of a county prosecutor may practice law or engage in any other business, trade, profession or occupation, whether or not for compensation.
- D. Provided that the particular activity is not prohibited by law or another section of this Code, cannot be reasonably expected to be in substantial conflict with the proper discharge of duties or to cast doubt on independence of judgment and impartiality in the performance of official duties, and cannot be reasonably expected to entail a commitment of time or effort that might interfere with the proper performance of duties, a county prosecutor or an employee of a county prosecutor may do any of the following:
  - (1) Engage in transactions involving financial, business, real estate and personal property interest.



- (2) Serve as the executor, administrator, trustee, guardian, or other fiduciary, for the estate, trust, or person of any person who is the spouse, child, parent, grandparent or sibling or other relative with whom the prosecutor or employee of the prosecutor has maintained a familial relationship, subject to the same restrictions on financial activities that apply when the prosecutor or employee is acting in a personal capacity;
  - (3) Engage in volunteer activities on behalf of nonprofit charitable, religious, sports, professional and other nonprofit organizations.
  - (4) Publish any work or give any speech in a private capacity, so long as an employee of a county prosecutor who is identified as an employee of a county prosecutor in the publication or at the time of the speech declares, in writing or orally as appropriate, that the views expressed are his or her personal views;
  - (5) Be a member of, hold any leadership position in, or otherwise participate in the activities of any professional organization devoted to the improvement of the law, the legal system, the administration of justice or the enhancement of the skills and professionalism of the members of the bar or law enforcement community or serve on the editorial board of, or contribute written work to, publications of such organizations.
- E. Provided that the particular activity is not prohibited by law or another section of this Code, cannot be reasonably expected to be in substantial conflict with the proper discharge of duties or to cast doubt on independence of judgment and impartiality in the performance of official duties, and cannot be reasonably expected to entail a commitment of time or effort that might interfere with the proper performance of duties, with notice to and approval of the county prosecutor, an employee of a county prosecutor may do any of the following:
- (1) Represent him or herself in any legal action or provide representation without compensation to a person who is his or her spouse, child or parent in a matter that is not adversarial in nature;
  - (2) Teach without compensation or for reasonable compensation;
  - (3) Provide other services as an independent contractor or employee for reasonable compensation.
- F. No county prosecutor, employee of a county prosecutor, member of the immediate family of a county prosecutor or of an employee of a county prosecutor, or business

organization in which either has a financial interest may solicit, receive or accept any gratuity, gift, favor, loan, political contribution, service, promise of future employment or other thing of value based upon an understanding, or under circumstances in which it would be reasonable to infer an understanding, that such thing of value was offered or given for the purpose of influencing the prosecutor or employee of the prosecutor, directly or indirectly, in the discharge of official duties or compensating the county prosecutor or employee of the county prosecutor for official action previously taken. Gifts of the following sort are presumed not to be offered for a prohibited purpose unless the circumstances give rise to a reasonable, contrary inference:

- (1) Gifts of a trivial or nominal value given in connection with a public appearance or on the same basis available to members of the general public;
  - (2) Ordinary social hospitality;
  - (3) A gift, favor or loan from a lending institution given on the same terms available to the general public;
  - (4) A scholarship given on the same terms available to members of the general public;
  - (5) An award or other honor given by a charitable or civic group because of public service provided that no monetary award, honorarium or stipend or other thing of value other than a plaque, trophy or other commemorative item of nominal value is given.
- G. No employee of a county prosecutor shall accept reimbursement from any source other than the office of the county prosecutor for expenses associated with attendance at an event in his or her capacity as an employee of the county prosecutor's office without prior notice to and approval of the county prosecutor.
- H. No county prosecutor or employee of a county prosecutor shall accept reimbursement from any source other than the office of the county prosecutor if the person, organization or a majority of the members of the organization offering reimbursement may reasonably be expected to be an adversary in a matter in which the county prosecutor represents the State or to otherwise appear in a matter before the county prosecutor. With the approval of the county prosecutor, this restriction may be waived if the event is designed to provide training, dissemination of information, or the exchange of ideas and the county prosecutor or the employee of the county prosecutor is making a speech or participating on a panel at the event, or is serving as a resource person for a speaker or panelist.

- I. No county prosecutor or employee of a county prosecutor may provide bail or bail costs to any person accused of a criminal offense other than a person who is a spouse, parent, child or sibling of the county prosecutor or employee of the county prosecutor.
- J. No county prosecutor or employee of a county prosecutor shall voluntarily testify as a character or reputation witness on behalf of any person accused of a criminal offense and no employee of a county prosecutor, except in the performance of official duties or with the approval of the county prosecutor, shall voluntarily testify as expert or fact witness in any civil or criminal proceeding. No employee of a county prosecutor shall accept any compensation from any person other than the county for expert testimony.
- K. No county prosecutor or employee of a county prosecutor shall recommend, contact or assist in obtaining counsel to represent any person, other than a spouse, parent or child of the county prosecutor or employee of the county prosecutor, who is accused of a criminal offense.
- L. A county prosecutor, assistant prosecutor or a detective or investigator who is an employee of a county prosecutor shall not privately retain or be represented in personal legal affairs by an attorney who maintains an active criminal practice within the county in which the person is employed.
- M. Excluding performance of official duties, no employee of the county prosecutor's office shall engage in any business, profession, trade or occupation which is subject to licensing or regulation by the State or political subdivision of the State unless approved by the county prosecutor and otherwise permitted by the provisions of this Code.

6. **POLITICAL ACTIVITY**

- A. A county prosecutor, assistant county prosecutor, detective, investigator, agent or office manager who is an employee of a county prosecutor shall not engage in any political activity.
- B. For purposes of this section, “political” means “primarily aimed at affecting the election to public office or political party office of a specific candidate or candidates or of the candidates of a particular political party in general.”
- C. For purposes of this section “political activity” means:
- (1) Any candidacy for elective public or political office;
  - (2) Any holding of a public or political office, or employment with any political party, organization or club;
  - (3) Any participation in any political campaign or working on behalf of any political party, organization or club;
  - (4) Any exhibiting of signs concerning political candidates on one’s person, vehicle or home;
  - (5) Any use of one’s name in connection with any political material;
  - (6) Any purchase, sale or distribution of tickets to or any attendance at any affair held for any political purpose whatsoever;
  - (7) Any contribution to a political party or candidate;
  - (8) Any soliciting or accepting of any contribution either directly or indirectly to or on behalf of any political party, organization or club or for any other political purpose whatsoever;
  - (9) Any use of one’s official influence to modify the political action of another; and
  - (10) Except as required for performance of official duties, any working at the polls during election time or as an election official at any time.

- D. An employee of a county prosecutor who is not an assistant prosecutor, detective, investigator, agent or office manager may engage in political activity prohibited by paragraphs 3, 4, 6, 7 and 8 subsection C. of this section so long as:
- (1) The activity is not conducted at the office of the county prosecutor or during the hours of duty or at any time so as to interfere with the operation of the office of the county prosecutor and the employee does not use any property or resources of the office;
  - (2) The employee does not in any way rely on his status as an employee of the county prosecutor in connection with the activity or identify himself or herself as an employee of the county prosecutor in connection with the activity;
  - (3) The employee does not display a partisan political message of any sort on any property of the state or county or on his or her person while on duty or in uniform identifying the person as an employee of the county prosecutor.

7. **DISCLOSURE, REPORTING AND RECORD KEEPING RESPONSIBILITIES**

- A. Prior to assuming office and on July 1 of every year in office, every county prosecutor and First Assistant Prosecutor must file, with the Director of the Division of Criminal Justice, the “Financial Disclosure Statement For Public Employees” (Attachment A). The Director shall keep the forms on file so long as the county prosecutor is in office and for five years thereafter.
- B. It shall be the duty of a county prosecutor or employee of a county prosecutor who is aware of conduct by himself or herself or any other that violates this Code, or violates State or federal law to disclose the conduct to the county prosecutor or a person designated by the county prosecutor.
- C. It shall be the duty of a county prosecutor or employee of a county prosecutor who reasonably believes any activity, policy or practice of the office is in violation of a law, or a rule or regulation promulgated pursuant to law, or is fraudulent or criminal, or is incompatible with a clear mandate of public policy concerning the public health, safety or welfare to disclose the activity, policy or practice to the county prosecutor or a person designated by the county prosecutor pursuant to the provisions of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.
- D. It shall be the duty of a county prosecutor or employee of a county prosecutor charged with a crime or charged with an offense or motor vehicle violation that could

adversely impact on the performance of duties to report the charge to the county prosecutor or person designated by the county prosecutor.

- E. An employee of a county prosecutor who has a reasonable doubt as to the propriety under this Code of any action shall seek the assistance of the county prosecutor or a person designated by the county prosecutor. The county prosecutor shall respond to any such inquiry and, in so doing, may seek the assistance of the Director of the Division of Criminal Justice.
- F. Any disclosure, notification, report, approval, waiver, request for assistance, or response pursuant to this Code shall be in writing and shall detail all relevant circumstances.
- G. It shall be the duty of the county prosecutor to keep records of all disclosures, notifications, reports, approvals, waivers, requests for assistance and responses covered by this Code.

## 8. **PENALTIES**

Persons who violate the provisions of this Code shall be subject to appropriate action, including, as authorized by applicable law or contract, removal, suspension, demotion or other disciplinary action.

## 9. **EFFECTIVE**

This Code of Ethics shall take effect on July 1, 1997, except that any county prosecutor or employee of a county prosecutor who on April 30, 1997 holds any interest, employment or position that is prohibited by this Code may request approval to continue to hold the interest, employment or position for a reasonable period of time, following the effective date of this Code, sufficient to permit orderly disposition of the interest or orderly satisfaction of the responsibilities of the employment or position. Such requests shall be filed with the county prosecutor and the Director of the Division of Criminal Justice. A request by a county prosecutor shall require approval of the Attorney General. A request by an employee of a county prosecutor shall require the approval of the county prosecutor and the Director.

April 30, 1997

## CODE OF ETHICS COMMITTEE OPINIONS

- Opinion No. 1*      Loaned Officers
- Opinion No. 2*      Members of Boards of Religious, Professional, Educational or Non-Profit Associations/Institutions
- Opinion No. 3*      Family Members of Prosecutors Serving on Boards of Charitable Organizations
- Opinion No. 4*      Direct Solicitation of Community Groups by Prosecutor For Donations to Fund an Authorized Gun Buy-Back Program
- Opinion No. 5*      Retroactivity of Code/Propriety of Criminal Defense Lawyer/Firm Continuing to Represent on Private Matters.
- Opinion No. 6*      Attendance at Various Political Functions
- Opinion No. 7*      Part-Time Attorneys Hired for Specific Functions (Modified 1/98)
- Opinion No. 8*      Prohibition of Investigators in Prosecutors' Office who are Admitted to Bar from Practicing Law in New Jersey or Another Jurisdiction
- Opinion No. 9*      1)      Retroactivity of Prohibition against Acting as a Trustee or Executor for an Estate other than that of an Immediate Family Member as Defined by the Code  
2)      Prohibition of Non-Family Co-Worker to be Executor of Another Employee's Estate
- Opinion No. 10*      Impact upon Division Personnel of Paragraph 5L of Code Dealing with Employment of Counsel with an Active Criminal Practice
- Opinion No. 11*      Holding of Positions in Non-Profit Sports Leagues or Cub Scout Type Organizations
- Opinion No. 12*      Participation in all Fund Raising Activities Approved Under Opinion Nos. 2 and 11

- Opinion No. 13*      Free Lunches offered by Restaurant during County Employee Appreciation Week
- Opinion No. 14*      APA/NJ - Propriety of Continuing to Retain a Lobbying Firm
- Opinion No. 15*      Propriety of local P.B.A. unit sponsoring a fund raiser for seriously ill member of Prosecutor's investigative staff
- Opinion No. 16*      Assistant prosecutor serving on the Board of Directors of a victims' rights organization
- Opinion No. 17*      Prosecutor appearing as "Roaster" at fund raising event for non-profit charitable organization
- Opinion No. 18*      Prosecutors and staff who attend seminar accepting gifts, dinners or free tickets to charitable events from these private entities; acceptance of any gifts or free meals, tickets, etc., from any private group
- Opinion No. 19*      Solicitation of funds from public and/or private corporations to assist in funding the SANE Program
- Opinion No. 20*      Assistant prosecutor serving on a County District Fee Arbitration Committee



# CODE OF ETHICS – OPINIONS

## INTRODUCTION

The opinions contained herein are the product of the Ethics Committee made up of members of the Prosecutors' Association and the Attorney General's Office. They are intended to provide guidance on issues which face members of the Prosecutors' offices and members of the Division of Criminal Justice. Reference in the opinions to Prosecutors or Prosecutors' staff should be considered to apply with equal force to members of the Division of Criminal Justice.

## OPINION NO. 1

A number of County Prosecutors have inquired whether officers on loan to the Prosecutors' Offices from other agencies are subject to the Code of Ethics. The Code does not apply to loaned officers since they are not employees of the County Prosecutors. A County Prosecutor, however, in his/her discretion may make all or part of the Code applicable to loaned officers.

## OPINION NO. 2

A number of inquiries have been made regarding the propriety of a Prosecutor or member of his/her staff sitting on the board of a religious, professional, educational or non-profit association or institution. Under Section 5D(3) of the Ethics Code, such activity is permissible provided the activity is disclosed to the Prosecutor or in the case of the Prosecutor, to the Director of the Division of Criminal Justice, to ensure that there is no conflict or appearance of impropriety. Pursuant to Ethics Code Sections 4D and E, one may not permit the use of one's title for non-official functions.

## OPINION NO. 3

A related question to that discussed in Opinion No. 2 is whether the Code of Ethics places any restrictions upon the spouse of a Prosecutor serving on the board of charitable organizations. The simple answer is that the restrictions placed upon a Prosecutor's involvement with such activity are not applicable to his or her spouse. While the Code does affect the family of the Prosecutor in certain specific areas, e.g., Section 5F of the Code, it is generally not applicable to family members.

#### **OPINION NO. 4**

An inquiry has been made regarding the direct solicitation of community groups by the Prosecutor for donations to fund an authorized gun buy-back program. No direct solicitation can occur. A Prosecutor may inquire of a group as to whether it would be interested in becoming a sponsor of such an event, but should not request a specific dollar amount and should clearly inform that group that all fund-raising must be done by them or any other civic group with which they decide to partner.

#### **OPINION NO. 5**

A number of counties have inquired about the retroactivity of the Code as it pertains to the propriety of a criminal defense lawyer or his firm continuing to represent the Prosecutor or his employees on private matters. This issue does not require an analysis as to the retroactivity of the Code, since this issue is governed by N. J. Advisory Committee on Professional Ethics Opinion No. 496, issued in 1982. That opinion states that members of the local defense bar should not undertake private legal representation of assistant prosecutors, county investigators or detectives. A copy of that opinion is annexed to this opinion for convenience.

The specific question in E.O. 496 concerned defense counsel with "active criminal defense practices." There is no definition of an active criminal defense practice. That will be a case-by-case determination to be made by the Prosecutor, or in the case of a Prosecutor inquiry, the Director of the Division of Criminal Justice. It is felt that no single standard or definition will be possible because of the diversity in criminal caseloads from county to county. Three cases may be an active criminal practice in a small county with a relatively small caseload, but might not constitute an active practice in a large county with a large caseload.

As to whether the entire law firm itself is disqualified, there is no opinion directly on point but it is felt that the financial connection between the criminal defense lawyer and his firm is too close to warrant differentiation. Therefore, it is determined the firm would also be disqualified.

#### **OPINION NO. 6**

An inquiry has been made regarding the parameters of the ban on attendance at various political functions. Specifically, the inquirer has asked whether he can accompany his wife, a professional lobbyist, to non-partisan or professional functions such as the Conference of Mayors. Those events that are not held for a political purpose but rather are in the nature of dinners or meetings of professional organizations can be attended.

Political events, such as the Governor's Ball, cannot be attended by the Prosecutor or any members of his staff.

**OLD SEE MODIFIED OPINION OF 1/28/98  
OPINION NO. 7**

An inquiry has been made regarding the application of the Code of Ethics to part-time attorneys hired for a specific function such as Megan's Law. The problem here is not the application of the Code, but the fact that a Prosecutor's Office is not authorized to have part-time attorneys, and no one other than a sworn assistant prosecutor may represent the state in court. See N.J.S.A. 2A:158-15.1 and 15.1A. See Also N.J. Ct. Rule 3:23-9 defining prosecuting attorney.

**OPINION NO. 7 (Modified 1/28/98)**

An inquiry has been made regarding the application of the Code of Ethics to part-time attorneys hired for a specific function such as Megan's Law. The problem here is not the application of the Code, but the fact that a Prosecutor's Office is not authorized to have part-time attorneys, and no one other than a sworn assistant prosecutor may represent the state in court. See N.J.S.A. 2A:158-15.1 and 15.1A. See Also N.J. Ct. Rule 3:23-9 defining prosecuting attorney.

The only exceptions to the foregoing are attorneys designated as legal assistants, who can be part-time and are authorized to represent the County Prosecutor in court proceedings. N.J.S.A. 2A:158-5. Cetrulo v. Byrne, 31 N.J. 321, 325-332 (1960). A part-time legal assistant in a Prosecutor's Office would be subject to the Code of Ethics as would any full-time employee of the Prosecutor's Office.

**OPINION NO. 8**

A question has been asked regarding whether the Code of Ethics prohibits investigators in Prosecutors' Offices who also are admitted to the Bar from practicing law in New Jersey or another jurisdiction. The Code of Ethics, Section 5C, does prohibit this type of outside employment regardless of jurisdiction and regardless of the type of law practiced. See also N.J. Ct. Rule 1:15-3a.

## **OPINION NO. 9**

A number of questions have arisen regarding the retroactivity of the Code's prohibition against acting as a trustee or executor for an estate other than that of an immediate family member as defined by the Code. Those persons who were acting as executors when the Code took effect may continue to act in that capacity until their function has been completed. Further, a County Prosecutor may act as a trustee for a non-profit entity created by the estate so long as no compensation is accepted, and no actual or apparent conflict of interest arises.

Another situation posited by one staff member is the propriety of designating a non-family co-worker in a Prosecutor's Office to be executor of the first employee's estate. This situation falls squarely within the Code and is prohibited. Code Section 5D2.

## **OPINION NO. 10**

An inquiry has been made as to how paragraph 5L of the Code dealing with employment of counsel with an active criminal practice would impact upon Division personnel. As noted in Opinion No. 5, there is a New Jersey Advisory Committee on Professional Ethics Opinion, E.O. 496, which prohibits defense counsel with active criminal practices in a county from representing county prosecutors in the county in which his active practice is located. Obviously this cannot be applied in the same fashion to Division personnel who practice in all 21 counties. Thus, we believe that the opinion would prohibit defense counsel with an active criminal practice with the Division of Criminal Justice from representing Division personnel on private matters. This removes the potential for an appearance of impropriety but still permits Division personnel to engage counsel where necessary.

## **OPINION NO. 11**

A number of additional questions have arisen as to Division or county prosecutor personnel holding positions in non-profit sports leagues or cub scout type organizations. The same restrictions noted in Opinion No. 2 dealing with religious, professional, educational or non-profit associations apply here. Under the Ethics Code, Section 5d(3), a member of the Division or County Prosecutor's Office may participate in such organizations so long as it is approved by the Director or the Prosecutor.

## **OPINION NO. 12**

A general inquiry has been made as to whether the Code prohibits participation in all fund raising for activities approved under Opinion Nos. 2 and 11. Fund raising which is *de minimis* such as selling candy, Girl Scout cookies or passing the collection plate at church would not be prohibited. Intra-office fund raising such as bike-a-thons or sponsored walks to raise money for various charities will also be deemed *de minimis* provided the solicitation of contributions is not done by the Prosecutor himself or herself and it is clearly conveyed that any contribution is strictly voluntary. Any other fund raising is deemed to be in conflict with Section 5D of the Code and is therefore prohibited.

## **OPINION NO. 13**

A Prosecutor has inquired whether members of his office may participate in a free lunch offered by a local restaurant as part of the restaurant's county employee appreciation week. Under Section 5F of the Code, acceptance of this free meal is absolutely prohibited.

## **OPINION NO. 14**

The Assistant Prosecutor's Association has inquired regarding the propriety of continuing to retain a lobbying firm to advance the interests of the members. There is nothing in the Code which would prohibit such an arrangement so long as there are no contributions to partisan political entities.

## **OPINION NO. 15**

An inquiry has been made regarding the propriety of a local P.B.A. unit sponsoring a fund raiser for a seriously ill member of the Prosecutor's investigative staff who is on unpaid leave of absence. The P.B.A. local is generally an independent entity which is not prohibited from raising funds by the Code of Ethics. If the local is made up entirely of members of the Prosecutor's Office, however, it is recommended that an independent local P.B.A. or other fraternal or charitable organization act as fund raiser. Acceptance by a member of the Prosecutor's Office of the funds raised under the circumstances here would not compromise the integrity of the Prosecutor's Office and thus would not be prohibited under the Code.

## **OPINION NO. 16**

The Ethics Committee has reviewed a request of an assistant prosecutor to serve on the Board of Directors of a victims' rights organization. The organization is non-profit and dedicated to assisting victims of crime and promoting victims' rights. Because the organization is heavily involved in political lobbying and fundraising activities, it would be inappropriate for an assistant prosecutor to serve on the Board of Directors of such an organization. Moreover, having an assistant prosecutor sit on the Board of a victims' organization may present an appearance problem. While all prosecutors and assistant prosecutors should protect the rights of victims, having a prosecuting attorney serving on the Board of Directors of a victims' organization blurs the line separating prosecutors from victims' advocates and would be inappropriate.

## **OPINION NO. 17**

The Committee has been asked to consider the propriety of a prosecutor appearing as a "roaster" at a charitable dinner designed to raise funds for a non-profit religiously affiliated hospital. The prosecutor would not solicit contributions nor permit contributions to be solicited in his name but his name would appear on the brochure for the event identifying him as a "roaster." Provided that the prosecutor's title is not used on the brochure or in any fundraising material, it does not appear that this would violate Section 5D of the Code.

## **OPINION NO. 18**

The Ethics Committee has reviewed a request by a Prosecutor to comment upon the propriety of Prosecutors and their staffs, who attend seminars put on by private entities, accepting gifts, dinners or free tickets to charitable events from these private entities. Acceptance of any gifts or free meals, tickets, etc., from any private group is prohibited by Section 5F of the Code of Ethics. This is really no more than a variation of the "free lunch" discussed in Ethics Opinion No. 13.

## **OPINION NO. 19**

The Ethics Committee has reviewed a request by a Prosecutor to render an opinion on the propriety of soliciting funds for the Sexual Assault Nurse Examiner (SANE) program. The SANE programs are set up somewhat differently, throughout the State, but those which are affiliated with the Prosecutor's Office are absolutely barred from raising funds from private or public entities. Those SANE programs which are not part of the Prosecutor's Office although where the Prosecutor cooperates or assists in the program,

would not be prohibited from fund raising. In this latter situation, however, the Prosecutor must ensure that his or her office is not linked to any fund raising efforts by the private entity that runs the SANE program in his or her county.

## **OPINION NO. 20**

An inquiry has been made regarding the propriety of an assistant prosecutor serving on a County District Fee Arbitration Committee. Fee Arbitration Committees, which are under the auspices of the Office of Attorney Ethics, have original jurisdiction in fee disputes between attorneys and clients who elect to be bound by the fee arbitration process. The New Jersey Supreme Court Advisory Committee on Professional Ethics has concluded that attorneys serving as arbitrators or mediators, even as third party neutrals, are engaged in the “practice of law.” N.J. Adv. Comm. Prof. Eth. Opinion 676 (April 4, 1994). Due to the potential conflict of interest and appearance of impropriety under Section 5E of the Code, as well as the prohibition against practicing law except in the performance of official duties under Section 5C of the Code and N.J.S.A. 2A:158-15.1, it is impermissible for assistant prosecutors or county prosecutors to serve on County District Fee Arbitration Committees. Any assistant prosecutor or county prosecutor already serving in such a capacity must immediately resign from such Committees.