

Virginia Conflict of Interest and Ethics Advisory Council



VML Annual Conference 2016

I. Council Membership

Council membership as of December 4, 2015:

Speaker of the House Appointees
The Honorable Del. C. Todd Gilbert
The Honorable Del. Jennifer L. McClellan
The Honorable Patricia Lee West (Chair)

Senate Committee on Rules Appointees
The Honorable Sen. Thomas K. Norment, Jr.
The Honorable Sen. Janet D. Howell
The Honorable Walter W. Stout, III

Gubernatorial Appointees
Walter C. Erwin
Bernard L. Henderson, Jr.
Sharon E. Pandak

II. Council Duties

The Council shall perform the following duties (pursuant to § 30-356 unless otherwise noted):

1. Review all disclosure forms required to be filed with the Council. The Council may review disclosure forms for completeness, including comparing lobbyist reports with other reports filed by the Council. If a disclosure form has been found to be incomplete, the Council shall notify the filer and direct the filer in writing to file a completed form within a prescribed period of time.
2. Provide software or electronic method for filers to submit the required disclosure forms. Council prescribes the method of execution and certification of electronically filed forms.
3. Accept and review any statement received from a filer disputing the receipt by such filer of a gift that has been disclosed on the form filed by a lobbyist.
4. Establish and maintain a searchable database comprising filed disclosure forms.
5. **Furnish formal and informal guidance to all persons required to comply with the Acts.**
6. Conduct training seminars and educational programs and publish educational materials for all persons required to comply with Article 3 and the State and Local Government Conflict of Interests Act and the General Assembly Conflicts of Interests Act, including orientation sessions for legislators.
7. Approve orientation courses conducted by state agencies and review, upon request, educational materials and training courses conducted for state and local government officers and employees.
8. Review actions taken in the General Assembly with respect to the discipline of its members for the purpose of offering nonbinding advice.
9. Request assistance, services, and information from any agency in order to effectively carry out its responsibilities.

10. Redact personal information from any form prior to making the form available to the public.
11. Report on or before December 1 of each year on its activities, including recommendations for changes in the laws, to the General Assembly and the Governor. The chairman is required to submit the report pursuant to the DLAS procedures for legislative documents.
12. Submit complaints against incumbent legislators to the appropriate ethics panel. § 30-114
13. Prescribe the forms required by §§ 2.2-426, 2.2-3117, 2.2-3118, and 30-111.
14. Provide disclosure forms to appropriate clerks at least 30 days prior to the filing deadline. § 2.2-3114
15. Notify the Secretary of the Commonwealth and the Attorney General concerning late or failure-to-file penalties. § 2.2-431, § 2.2-3124
- 16. Receive and review requests for approval of travel submitted by individuals required to file a Statement of Economic Interests. (§ 30-356.1)**

III. Prohibited Conduct and Personal Interest

A. Prohibited conduct § 2.2-3103

1. Solicit or accept money or other thing of value for services performed within the scope of your official duties except for compensation paid by your agency
2. Offer or accept any money or other thing of value for obtaining employment, appointment, or promotion of any person with any governmental or advisory agency
3. Offer or accept any money or other thing of value for the use of your public position to obtain a contract for any person or business with any governmental or advisory agency
4. Use confidential information that you have acquired by reason of your public position and which is not available to the public for your or another party's economic benefit
5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence you in the performance of your official duties; this does not include political contributions actually used for a political campaign or constituent services and reported as required by campaign finance laws
6. Accept any business or professional opportunity when you know that there is a reasonable likelihood that the opportunity is being given to influence you in the performance of your official duties
7. Accept any honoraria for any appearance, speech, or article in which you provide expertise or opinions related to the performance of your official duties (this only applies to the Governor, Lt. Governor, Attorney General, Governor's Secretaries, and heads of departments of state government)
8. Accept a gift from a person who has interests that may be substantially affected by the performance of your duties under circumstances where the timing and

nature of the gift would cause a reasonable person to question your impartiality in the matter affecting the donor

9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of your public office for private gain
 10. Use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of any public employer to govern conduct of its employees, and to take disciplinary action, in accordance with applicable law, and provided further that this subdivision shall not limit the authority of a constitutional officer to discipline or discharge an employee with or without cause.
- B. "Personal interest" is a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. § 2.2-3101

Such interest shall exist by reason of:

1. ownership in a business if the ownership interest exceeds three percent of the total equity of the business;
 2. annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business;
 3. salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually;
 4. ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property;
 5. personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or
 6. an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv) above
- C. Personal Interest in a Contract § 2.2-3109
- You may not have a personal interest in a contract with your agency other than your own contract of employment. There are many exceptions to this prohibition. It is recommended that you contact the Council regarding the application of the exception.

D. Personal Interest in a Transaction § 2.2-3112

You must publicly disqualify yourself if the transaction applies solely to the entity in which you have a personal interest. There are exceptions to this rule, but it is recommended that you contact the Council regarding application of the exceptions.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

IV. Gifts

When discussing gifts, always ask three separate questions:

1. Is it a gift?
2. Does it count toward the \$100 gift cap?
3. Do I have to report it on my Statement of Economic Interests?

A. Definition of a gift § 2.2-3101

A gift is any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred.

A gift is not:

- (i) Any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used;
- (ii) Honorary degrees;
- (iii) Any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public;
- (iv) A campaign contribution properly received and reported pursuant to Campaign Finance Disclosure laws;
- (v) Any gift related to the private profession or occupation of a legislator/state/local official or employee or of a member of their immediate family;
- (vi) Food or beverages consumed while attending an event at which the filer is performing official duties related to his public service;
- (vii) Food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer;
- (viii) Unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service;
- (ix) A devise or inheritance;
- (x) Travel disclosed pursuant to the Campaign Finance Disclosure laws;

- (xi) Travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state;
- (xii) Travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House Committee on Rules or its Chairman or the Senate Committee on Rules or its Chairman;
- (xiii) Travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment;
- (xiv) Gifts with a value of less than \$20; or
- (xv) Gifts from relatives or personal friends. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse. For the purpose of this definition, "personal friend" does not include any person that the filer knows or has reason to know is a registered lobbyist or a lobbyist's principal.

Items that are exempted from the definition of a gift are not subject to the \$100 gift cap and do not have to be reported as a gift of your Statement of Economic Interests.

Please remember that travel that is not a gift may still be reportable on your disclosure form.

B. \$100 gift cap § 2.2-3103.1

Individuals required to file a Statement of Economic Interests and their immediate family may not accept gifts with a total value in excess of \$100 in a year from a lobbyist, lobbyist's principal, or an entity that is a party to or is seeking to become a party to a contract with the filer's agency. Immediate family means (i) a spouse and (ii) any other person who resides in the same household as the filer and who is a dependent of the filer.

C. Exceptions to the \$100 gift cap § 2.2-3103.1 (D, F, and G)

- a. Gifts given from lobbyists or contractors who are also your personal friend. In order to determine if an individual is your personal friend, you should consider the following:
 - i. The circumstances under which the gift was offered;
 - ii. The history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them;

- iii. To the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and
 - iv. Whether the donor has given the same or similar gifts to other persons required to file the disclosure form.
- b. Food, beverages, entertainment, and the cost of admission or registration at a widely attended event. To determine if an event qualifies as a widely attended event, the event must:
- 1. Have at least 25 persons invited or expected to attend, and
 - 2. Be open to individuals who:
 - i. share a common interest
 - ii. are members of a public, civic, charitable, or professional organization,
 - iii. are from a particular industry or profession, or
 - iv. represent persons interested in a particular issue.
- c. Travel approved by the Council via a travel waiver
While such travel is exempted from the \$100 gift cap, it must be reported on your Statement of Economic Interests on the schedule requiring disclosure of certain travel.

D. Reporting gifts

- a. You must report any gift valued over \$50 or any combination of gifts with an aggregate value over \$50 received from any business, governmental entity, or individual by you or a member of your immediate family.

V. Statement of Economic Interests

A. Who must file?

- a. Individuals named in § 2.2-3114, 2.2-3115, and 2.2-3116
- b. Individuals named in Executive Order 33

B. With what entity do I file?

- a. Individuals named in § 2.2-3114 and 2.2-3116 file with the Council
- b. Individuals named in § 2.2-3115 file with the local clerk of the governing body

C. When do I file?

Statements of Economic Interests are filed electronically once a year with the Council, every January 15 for the preceding year.

Deadlines are moved to the next business day if they fall on a weekend or state holiday.

D. Online filing required beginning July 1, 2016

- E. \$250 penalty for late filing
 - a. If you require a deadline extension, you may do so by submitting a deadline extension request form found on the Council website.
 - b. The Council has five (5) business days to respond to a request. If more information is requested, the Council has five (5) business days after the information is received to respond to the request.
 - c. Deadline extensions are granted for:
 - 1. The death of a relative of the filer, as relative is defined in the definition of "gift" in Article 3 or the Acts.
 - 2. A state of emergency is declared by the Governor pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 or declared by the President of the United States or the governor of another state pursuant to law and confirmed by the Governor by an executive order, and such an emergency interferes with the timely filing of disclosure forms. The extension shall be granted only for those filers in areas affected by such emergency.
 - 3. The filer is a member of a uniformed service of the United States and is on active duty on the date of the filing deadline.
 - 4. A failure of the electronic filing system and the failure of such system prevents the timely filing of disclosure forms.
 - 5. Good cause shown.

VI. Travel Waivers

- A. When do I need to request a travel waiver?
 - a. Travel waivers are only required for travel valued over \$100 paid by a lobbyist, lobbyist's principal, or an entity that is a party to or is seeking to become a party to a contract with your agency (contractor).
 - b. Travel waivers are **NOT** required for government paid travel or travel paid for by any other entity who is not a lobbyist, lobbyist's principal, or contractor. Please remember that trips and travel that do not require a travel waiver may still be reportable on Schedule D or E.
 - c. Requests can be made on the Council's website at:
<http://ethics.dls.virginia.gov/travel-waiver-request.asp>
- B. How are travel waiver requests processed?

The Council has five (5) business days to respond. If the Council does not approve or deny the request within that time, the request shall be deemed approved by the Council. If more information is requested, the Council has five (5) business days after the information is received to respond to the waiver request.

VII. Other Questions

1. How and under what circumstances is individual information released?

ANSWER: All filings are available to the public via a Freedom of Information Act request. § 30-356 requires all disclosures filed with the Council to be filed electronically and ALL disclosures to be available in a searchable database online after July 1, 2016.

2. Are filers notified when their disclosure forms are requested and released?

ANSWER: There is no requirement that the filer be notified that the information has been requested.

3. Is personal information released when a disclosure statement is requested?

ANSWER: Per an opinion from the Office of the Attorney General, local clerks have no authority to redact any information from disclosure filings.

4. What training is required and available?

ANSWER: Local officers and employees have no requirement to complete training. However, there is optional training available on the Council website.

Contact Information:

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