

1. Addressing the concern that daily duties for public-facing employees, who have no discretionary authority, might otherwise be accused of having a conflict of interest.
2. Addressing the issue that a “public” recusal might disclose otherwise privileged or confidential information.
3. Addressing the concern that attorneys might be compelled to disclose information that is confidential or privileged when disclosing a conflict, or filing a non-recusal form.

§ 1203. CONFLICT OF INTEREST

(a) Course of action. Each time a public servant is confronted with a conflict of interest, other than that for which the public servant’s action is solely ministerial or clerical, the public servant shall either make a public statement, or a statement to the public servant’s immediate supervisor, recusing themselves from the matter or, if the public servant chooses to proceed with the matter after consulting with the immediate supervisor, prepare a written statement regarding the nature of the conflict. A public servant may request either guidance from an immediate supervisor or an advisory opinion from the State Ethics Commission in consultation with their immediate supervisor in making an initial determination whether a conflict of interest exists, or whether good cause to proceed exists as set forth in subsection (b) of this section. If the public servant chooses to proceed with the matter, the public servant’s prepared written statement shall:

(1) describe the matter requiring action;

(2) disclose the nature of the potential conflict or actual conflict of interest;

(3) explain why good cause, as set forth in subsection (b) of this section, exists so that the public servant can take action in the matter fairly, objectively, and in the public interest;

(4) include sufficient detail so that the matter may be understood by the public; and

(5)be filed in accordance with the policies and procedures set forth by the agency or entity governing the matter in question, including any requirement that the statement be made public.

(b) Good cause. As used in this section, “good cause to proceed” may include any of the following:

(1)the identified conflict or potential conflict is de minimis in nature;

(2)the action to be taken is ministerial or clerical;

(3)the conflict is amorphous, intangible, or otherwise speculative; or

(4)the public servant cannot legally or practically delegate the matter.

(c) Conduct after recusal. Once recused, a public servant shall not in any way participate in or act to influence a decision regarding the matter.

(d) Confidential information. Nothing herein shall require a public servant to disclose confidential information, or information that is otherwise privileged under law.

4. Addressing the concern that an “appearance” of impropriety might subject attorneys to accusations for matters that are not within the Code of Ethics

§ 1203b. APPEARANCE OF UNETHICAL CONDUCT

A public servant shall avoid any actions creating the appearance that the public servant is violating the law or the Code of Ethics. Whether particular circumstances create an appearance that the law or the Code of Ethics have has been violated shall be determined from the perspective of a reasonable individual with knowledge of the relevant facts.