

MONTANA PUBLIC EMPLOYEES' RETIREMENT BOARD

October 9, 2014

Education Session- Ethics

Melanie Symons

This month's Board Education will focus on Board member ethics and how ethical responsibilities compare and contrast with your fiduciary duties.

Information provided includes:

- (1) Ethics II – Knowing and Doing. This handout came from the International Foundation for Retirement Education (InFRE) Ethics course I attended during the 2014 NAGDCA conference.
- (2) Montana's State Ethics Policy, a summary of the Standards of Conduct contained in MCA 2-2-101 through 2-2-304.
- (3) Other Montana Standards of Conduct applicable to public officers

The Ethics II InFRE handout should be reviewed by Board Trustees prior to the October 9, 2014 Board meeting. Two or three scenarios will be presented at the Board meeting for Board consideration and discussion.

## Ethics II – Knowing and Doing

NAGDCA Annual Conference

September 2014

Mary Willett  
Willett Consulting



## Course Objectives

- Understand the difference between fiduciary responsibilities and ethical standards
- Recognize ethical/unethical behavior and actions in a variety of situations
- Examine your personal decision making process
- Review and understand the InFRE Code of Ethics and its application



## Today's Agenda

- Review fiduciary role & responsibilities
- Define ethics and ethical behavior
- Examine ways to develop an ethical workplace environment
- Review InFRE Code of Ethics
- Conduct case study group exercise



## Understanding Fiduciary Roles & Responsibilities



## Determining Fiduciaries

- Anyone who
  - Has discretionary authority over the plan and its assets
  - Exercises control over plan assets
  - Gives investment advice for compensation
- Fiduciary may be designated by name or function
- Responsibilities may be delegated to others



## Functional Analysis

- Did you participate in decisions pertaining to offering the plan and selecting investment options?
- Are you a member of committee or board that has responsibility to review the plan, its provisions, or its investment options?
- Do you have any responsibility to choose or evaluate service providers?



## Functional Analysis

- Do you establish policies and procedures relating to plan administration, or do you have authority to make exceptions to these rules?
- Do you have authority to bind the employer through contracts or delegate certain functions for the plan?



## Who is not a fiduciary?

Anyone who...

- Applies plan rules in a non-discretionary manner in determining eligibility for participation or benefits
- Prepares employee communication materials
- Calculates benefits according to rules found in the plan document
- Receives contributions and applies them as required by the plan



## Fiduciary Duties

- Act solely in the interest of plan participants and beneficiaries
- Maintain the plan and its assets for the exclusive purpose of providing benefits
- Act with care, skill, prudence, and diligence as a prudent person would in a similar circumstance



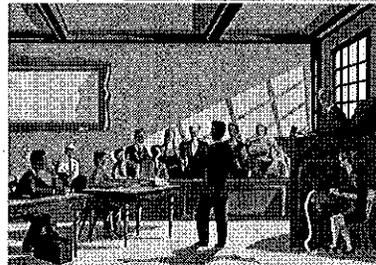
## Fiduciary Duties

- Diversify the plan's assets to minimize risk unless it is clearly prudent to do otherwise
- Act in accordance with plan documents and other governing instruments



## Consequences of Failure

- Employee distrust
- Public scrutiny
- Legal actions
- Potential liability

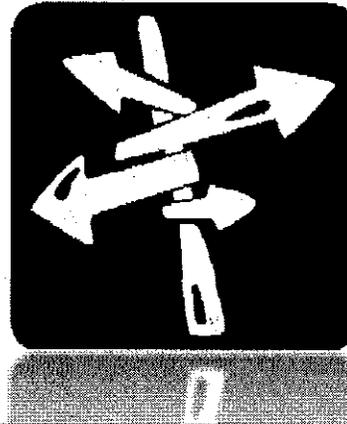


## Ethics & Ethical Behavior Defined



## Why Study Ethics?

- To review widely recognized principles and frameworks for making a “rational” decision when the best action is not clear



InFRE

## Ethics

- System of moral principles
- Deals with right versus wrong conduct based on the profession's rules of conduct
- For ethical situations, the answer is not always clear



InFRE

## Ethical Behavior

- How do you behave when you think no one is looking?
- Knowing the difference between
  - *What you have a right to do*
  - *What is the right thing to do*
- What is your personal responsibility, beyond the law



## Laws and Professional Code of Ethics

- Ethics goes beyond legal rules
- Conflicts of interest are good examples of ethical dilemmas that are not governed by law
- InFRE code of ethics was established to provide guidance on acceptable behavior for retirement plan professionals

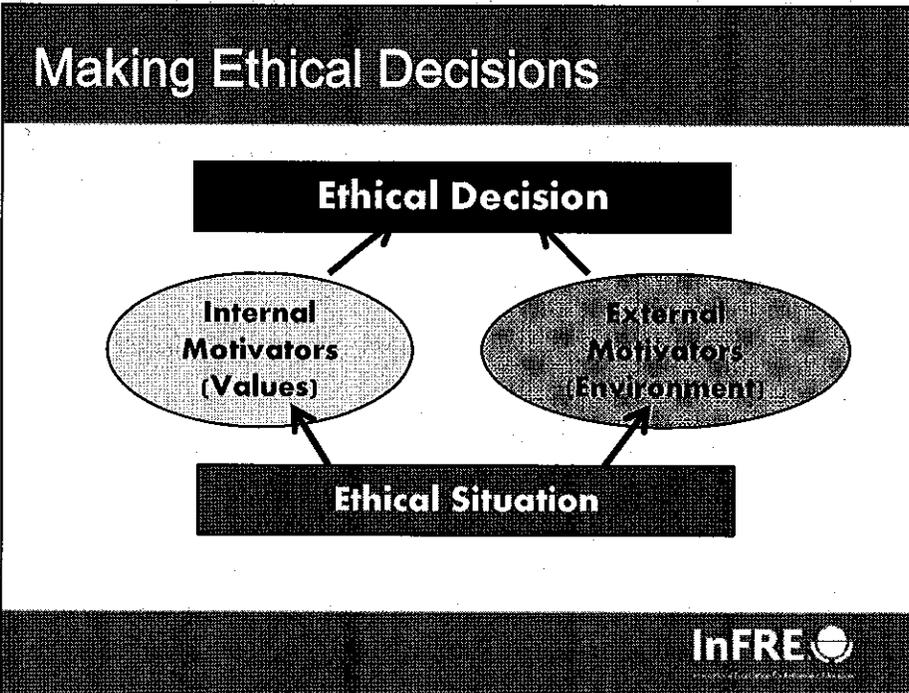


## We Want to Do the Right Thing

- How do we act when the right thing isn't clear?
- Where can we look for guidance?



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## Approach to Ethical Decisions

- **Conventional approach:** Compares actions to what is considered the prevailing norm to justify conduct
  - "everyone does it" - i.e., *taking office supplies*
- **Utilitarianism approach:** Considers the greatest good for the greatest number of people to determine if a decision is ethically sound
  - Consider Robin Hood...



## Principle of Rights

- **Considers one's duty or obligation in resolving ethical situations**
- **Individual's rights take priority**
- **Moral principles guide decision regardless of consequences**
  - Honesty, Fairness
  - Loyalty, Trustworthiness
  - Respect for others



## Golden and Platinum Rules

### Golden Rule

*Do unto others as  
you would have  
them do unto you*

Considered the  
"natural law"

### Platinum Rule

*Do unto others as  
they would have you  
do unto them*

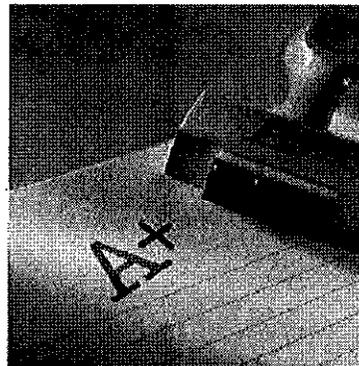
Considers what  
would be right from  
the other person's  
perspective



## Am I doing the right thing?

■ Ethical tests can help you make the right decisions

- Disclosure test
- Ventilation test
- Intuition test



## Disclosure Test

■ How would you feel if your actions are made public?

- National news?
- Plan newsletter?
- Your friends?



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## Ventilation Test

- What would someone else do?
- Check with others on your decision
  - someone whose opinion you trust
  - manager or co-worker
- Offers consistency within an organization
- May be necessary to consult legal counsel, auditor, human resource director

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## Intuition Test



- A gut reaction
- May be the first sign of an ethical dilemma
- Healthy procrastination



## Ethical Workplace Environment



## Workplace Environment

- Culture at work is a powerful influence on one's ethics
- Does the organization as a whole
  - Respect authority and the organizational structure
  - Commit to group success
  - Recognize and reward team players
  - Reject pressure for bottom-line results
  - Not penalize "messengers of bad news"
  - Conform to expectations of behavior



Studies show that when it comes to dealing with ethical dilemmas on the job, influences within the organization play a significant role



*For example, behavior of immediate supervisor shown to have the most impact on our actions*



## Role of Leadership

- Organizational leaders have a responsibility to set the tone by
  - Setting an example
  - Rewarding ethical behavior
  - Discouraging unethical behaviors



## Creating an Ethical Environment

- Ethics is everyone's responsibility, not just the boss'
- Organizational values and policies need to be communicated and understood
- Ethical behavior should be expected and encouraged



## Communication and Training

- Newsletters can promote an ethical environment
  - Articles to highlight ethical situations and how they were handled
- Workshops and videos can be used to increase sensitivity to ethical issues and demonstrate problems and solutions
  - Role playing can be used to share experiences and brainstorm solutions



## Steps to Resolve the Situation

- Make informed decisions
- Know the facts from every side
- Consider the consequences
  - *Who will benefit?*
  - *Who will be harmed?*
  - *Who has rights in this situation?*
  - *How will the affected parties react?*



## Understand Your Obligations

- To the plan sponsor?
- To the participants and beneficiaries?
- To a third party administrator?



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## Check for Established Policy

- Is there a policy for your dilemma?
- What if you don't agree with the policy?



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## Character & Values

- Is what you are about to do compatible with what you believe in?
- Can you can live with your decision?



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## Check With Others

- Don't go it alone
- New point of view?
- Validation?

*Have confidence in your decision*

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## InFRE CODE OF ETHICS



## InFRE Code of Ethics

The InFRE Code of Ethics provides guiding principles to address situations that retirement counselors, administrators, and other financial professionals are likely to face in their professional activities



## Principles Of Conduct

### ■ Principle # 1

- Comply with the letter and spirit of all federal and state laws that regulate advice, services, records, and transactions applicable to retirement planning or retirement administration.



## Principles Of Conduct

### ■ Principle #2

- Act always in the best interest of the individual retirement plan participant for whom services are performed; And, when performing services for a retirement plan as a whole, act in the best interest of the plan and all persons who have rights under the plan.



## Principles Of Conduct

### ■ Principle #3

- Never disclose confidential information about the finances or status of a particular plan participant unless authorized by the participant or by law.



## Principles Of Conduct

### ■ Principle #4

- Be truthful and forthright in all communications relating to retirement services and transactions.



## Principles Of Conduct

### ■ Principle #5

- Perform all retirement services competently, diligently, and according to the highest professional standard; the designee will maintain the necessary specific knowledge and expertise to do so, and decline any activity that cannot be competently performed.



## Principles Of Conduct

### ■ Principle #6

- Conduct activities relating to the retirement profession under the highest standards of personal and professional integrity, and in ways that reflect creditably on the profession.



## Principles Of Conduct

### ■ Principle #7

- Disclose to all persons for whom services are provided the Certificate Holder's source of compensation, the identity of any person or entities paying the compensation, and any material fact about the compensation that is necessary to understand potential adverse interest.



## Principles Of Conduct

### ■ Principle #8

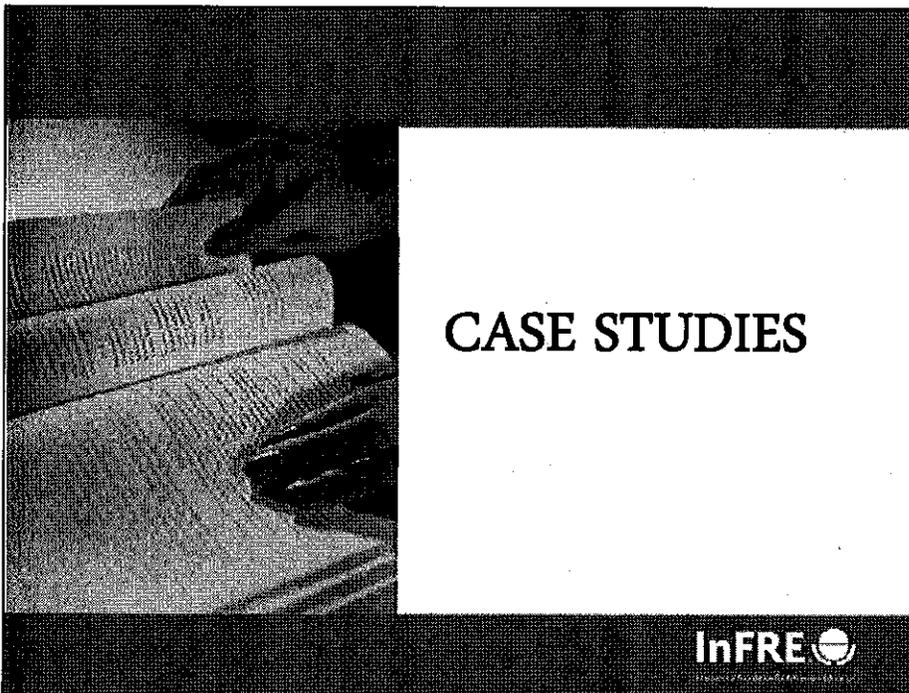
- Supply material information relating to the transaction or service to the person for whom services are performed (including information that is not requested), if such information is generally recognized as necessary to any informed decision.



## In Summary....

When dealing with ethical situations –

- Gather information
- Consider results of alternate course of actions
- Identify ethical or legal obligations
- Consider personal values
- Check for established policies
- Confirm with others (as appropriate) on decisions

A slide titled "CASE STUDIES". On the left side, there is a black and white photograph of a person's hands flipping through the pages of a thick book or document. The right side of the slide is white with the text "CASE STUDIES" in a large, bold, black, sans-serif font. At the bottom right corner, the InFRE logo is displayed, identical to the one in the slide above.

## Identify an ethical situation

- Identify an ethical situation you recently faced
- Explore ethical issues pertaining to this situation within the group
- Examine how you arrived at a decision or action
- Determine alternate decisions or actions that could have been taken



	<b>Montana Operations Manual</b>  <b>Policy</b>	Category	<b>Human Resources/ Employee Benefits</b>
		Effective Date	<b>01/31/2011</b>
		Last Revised	<b>03/20/2013</b>
Issuing Authority	<b>Department of Administration State Human Resources Division</b>		
<b>State Ethics Policy</b>			

### I. Purpose

State of Montana employees will conduct their duties for the benefit of the people of the state. Two main principles apply to conduct: public trust and public duty. Public employment is a public trust created when the public places its confidence in the integrity of public employees.

Each state agency must adopt this model policy. State agencies may expand upon this policy with additional provisions appropriate to the specific circumstances of the agency ([2-18-102](#)(4), MCA).

### II. Scope

This policy covers all employees in Montana's executive branch except the Montana University System, the Montana State Fund, elected officials, personal staff of elected officials, and any other position specifically excluded under [2-18-103](#) and [-104](#), MCA.

Agencies must follow the provisions of this policy unless they conflict with collective bargaining agreements, which will take precedence to the extent applicable.

A person under contract with the state meets the definition of public employee for the purposes of the standards of conduct statutes ([2-2-102](#)(7), MCA). Agencies must include contractors in the application of these requirements.

### III. Procedures

Employees shall abide by the code of ethics and standards of conduct found in [2-2-101](#) through [2-2-304](#), MCA, at all times. The statutes must be consulted whenever an issue arises. Employees shall avoid conflicts of interest between public duty and private interests, favoritism, bias, and the appearance of impropriety. Employees are encouraged to discuss or report any potential ethical violations with agency management before the action occurs.

## **A. Education Requirements**

1. The department provides agencies with a pamphlet summarizing the State's standards of conduct. Agency management shall distribute the pamphlet and the agency's ethics policy to all new employees.
2. Agency management shall provide ethics refresher training to agency employees at least every three years. The training must require employees to read and review the standards of conduct pamphlet and the agency's ethics policy. Each employee shall provide a written statement to management acknowledging the employee has read the policy and agrees to abide by the policy and statutes.

## **B. Use of State Equipment and Resources**

State employees may not use public time, facilities, equipment, supplies, personnel, or funds for the employee's private business purposes ([2-2-121\(2\)\(a\)](#), MCA). State employees may not use these state resources to solicit support for or opposition to a political committee, nomination or election of an individual to public office, or the passage of a ballot issue unless the use is authorized by law ([2-2-121\(3\)\(a\)](#), MCA).

## **C. Conflicts of Interest**

1. State employees may not engage in substantial financial transactions for the employee's private business purposes with a person whom the state employee inspects or supervises in the course of the employee's official duties ([2-2-121\(2\)\(b\)](#), MCA).
2. State employees may not perform official acts directly and substantially having negative economic impacts on businesses or undertakings in competition with a business or undertaking in which the employee has a significant interest ([2-2-105\(5\)](#), MCA).
3. State employees may not acquire an interest in any business or undertaking the employee has reason to believe may directly and substantially economically benefit from official action the employee's agency is planning ([2-2-105\(2\)](#), MCA).
4. State employees may not perform an official act that will directly and substantially affect the economic benefit of a business or other undertaking in which the employee has a substantial financial interest or is engaged as counsel, consultant, representative, or agent ([2-2-121\(2\)\(e\)](#), MCA).

5. State employees may not participate in a proceeding when an organization of which the employee is an officer or director is: 1) involved in a proceeding before the employing agency and within the scope of the employee's job duties, or 2) attempting to influence a local, state, or federal proceeding in which the employee represents the state ([2-2-121](#)(5), MCA).
6. State employees may not lobby on behalf of an organization of which the employee is a member while performing their public employee job duties. State employees may perform charitable fundraising activities as approved by their supervisor or authorized by law ([2-2-121](#)(6), MCA).
7. Former state employees may not, within 12 months following voluntary termination of employment, obtain employment in which the employee will take direct advantage of matters the employee was directly involved with while employed with the state. These matters are defined as rules, other than rules of general application, the employee actively helped to formulate and applications, claims, or contested cases where the employee actively participated in the decision process ([2-2-105](#)(3), MCA).
8. State employees may not have a majority interest in any contract made by them in their official capacity or by any agency of which they are employed if they are directly involved with the contract ([2-2-201](#)(1), MCA).
9. Former state employees may not, within six months of termination, contract or be employed by someone who contracts with the state involving matters with which the employee was directly involved during their employment with the state. This does not apply to contracts awarded to the low bidder based on a competitive process or to merchandise sold to the highest bidder at public auction. This does not apply to employees if terminated because of a reduction in force ([2-2-201](#)(1) and (2), MCA).

#### **D. Confidential Information**

State employees may not disclose or use confidential information acquired in the course of official duties to further substantially their personal economic interests ([2-2-104](#)(1)(a), MCA).

#### **E. Collecting Fees as Compensation for Official Duties**

1. State employees may not collect a fee or other form of compensation for assisting any person in obtaining a contract, claim, license, or economic benefit from the employee's agency ([2-2-121](#)(2)(c), MCA).

2. State employees may not assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency ([2-2-121\(2\)\(d\)](#), MCA).

#### **F. Overlapping Employment and Other Employment**

1. State employees may not receive pay for two separate public employment positions that overlap for the hours being compensated. The following exceptions apply:
  - a. the employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the employee is absent, or
  - b. the employee's salary is reduced by the amount received from the other public employer to avoid duplicate compensation for the overlapping hours; or
  - c. the income received is from the use of accrued leave or compensatory time during the period of overlapping employment ([2-2-104\(3\)](#), MCA).
2. Employees may not solicit or accept employment, or engage in negotiations to consider employment, with a person the employee regulates unless the employee provides written notification to agency management. Employees must report in writing such employment activity to their supervisor and the department director prior to engaging in any official duties ([2-2-121\(2\)\(f\)](#), MCA).

#### **G. Gifts and Offers Intended to Influence Employees' Actions**

1. Employees may not accept a substantial gift or economic benefit, generally anything over \$50 in value, that would tend to influence employees in the performance of their duties or that employees know is a reward for official actions. Economic benefit includes loans with an interest rate substantially below market and compensation for private services at substantially higher than market.
2. Some items are excluded from the definition of gift. These items are listed below:
  - a. any gift that is not used and is either returned to the provider or donated to a charitable organization
  - b. food and beverages consumed when participating in a charitable, civic, or community event bearing a relationship to the employee's official capacity
  - c. educational materials directly related to official duties
  - d. an award presentation in recognition of public service

- e. an educational activity that does not place the employee under obligation, serves the public good, and is not lavish or extravagant ([2-2-104](#)(1)(b) and (2), MCA; [2-2-102](#)(3), MCA).

## H. Policy Violations

1. Employees must disclose potential conflicts of interest to agency management prior to taking any action potentially violating this policy or the law. Agency management may take steps to avoid the conflict of interest from occurring.
2. Any person who believes an employee violated this policy or agency-specific rules and standards of conduct may file a complaint with the commissioner of political practices. The complaint procedure with the commissioner of political practices is located in ARM [44.10.601 to .613](#).
3. An employee shall inform agency management of the alleged violation before filing a complaint with the commissioner.

## I. Disclosure Requirements

1. **Nature of Private Interest:** Public employees must disclose the nature of any private interest creating a conflict prior to acting in a manner impinging on public duty. State employees must make the disclosure in writing to the commissioner of political practices. The disclosure must include:
  - a. information listing the amount of private interest, if any;
  - b. the purpose and duration of the services rendered, if any; and
  - c. the compensation received for those services or other information necessary to describe the interest.

If the state employee performs the official act involved, the employee must publicly declare the nature of the conflict for the record prior to performing the act. The declaration must contain the information contained in a, b, and c above.

2. **Overlapping Public Employment:** Employees must disclose overlapping employment in public positions to agency management prior to accepting employment. The Administrative Rules of Montana ([44.10.601](#)) require state public employees who receive multiple salaries from multiple public employers for overlapping work hours to report their employment and salaries to the commissioner of political practices.
3. **Requirements for Agency Directors:** Agency directors must file a business disclosure statement provided by the commissioner of political practices with

the Commissioner prior to December 15 of each even-numbered year ([2-2-106](#), MCA).

#### J. Investigation and Enforcement

1. Agency management shall investigate reported or disclosed information to determine the appropriate administrative action. An appropriate administrative action may include a complaint to the Commissioner when the agency has no authority to prevent or remedy the violation.
2. Employees who violate this policy, the standards of conduct provided in [2-2-102](#), et seq., MCA, or agency-specific rules and standards of conduct may be subject to disciplinary action in accordance with the Discipline Policy (ARM [2.21.6501](#) et seq.).

#### IV. Resources

1. The State Human Resources Division publishes *Ethics: Standards of Conduct for State Employees*. The guide is available at <http://hr.mt.gov/content/hrpp/docs/Guides/standardsofconductguide.doc>.
2. The division also publishes a *Manager Fact Sheet: Political Activity of Public Officers and Employees*. The fact sheet can be found at <http://hr.mt.gov/content/hrpp/docs/Guides/PoliticalActivityFactSheet>
3. The Professional Development Center Teaches “*Ethical Issues in Public Service*.” <http://pdc.mt.gov/default.mcpX>
4. The Professional Development Center provides a brief online training resource located on at: <http://www.pdc.mt.gov/default.mcpX>

#### V. Definitions

All definitions under [2-2-102](#), MCA, apply to this policy. The following definitions also apply.

**Business:** Includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

**Compensation:** Any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person

APPLICABLE STANDARDS OF CONDUCT  
(Public Employees includes Board Members per 2-2-102(7)(c), MCA)

**2-2-101. Statement of purpose.** The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

**2-2-102. Definitions.** As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(6) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) "Public employee" means:

- (a) any temporary or permanent employee of the state;
  - (b) any temporary or permanent employee of a local government;
  - (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
  - (d) a person under contract to the state.
- (8) (a) "Public officer" includes any state officer and any elected officer of a local government.
- (b) For the purposes of [67-11-104](#), the term also includes a commissioner of an airport authority.
- (9) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.
- (10) (a) "State agency" includes:
- (i) the state;
  - (ii) the legislature and its committees;
  - (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
  - (iv) the university system; and
  - (v) all independent commissions and other establishments of the state government.
- (b) The term does not include the judicial branch.
- (11) "State officer" includes all elected officers and directors of the executive branch of state government as defined in [2-15-102](#).

**2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

- (4) (a) The enforcement of this part for:
- (i) state officers, legislators, and state employees is provided for in [2-2-136](#);
  - (ii) legislators, involving legislative acts, is provided for in [2-2-135](#) and for all other acts is provided for in [2-2-136](#);
  - (iii) local government officers and employees is provided for in [2-2-144](#).
- (b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government.

**2-2-104. Rules of conduct for public officers, legislators, and public employees.** (1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

- (a) disclose or use confidential information acquired in the course of official duties in

order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices

**2-2-105. Ethical requirements for public officers and public employees.** (1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking

**2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.

(ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) (a) A candidate, as defined in [13-1-101](#)(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in [5-7-102](#), on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in [30-17-101](#) of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform

an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under [2-2-131](#).

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.

**2-2-131. Disclosure.** A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

**2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to [2-2-144](#) or filed by a person directly with the commissioner pursuant to [2-2-144](#)(6). If a complaint is filed against the commissioner or another individual employed in the office of the commissioner, the complaint must be resolved in the manner provided for in [13-37-111](#)(5). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.

(b) If the commissioner determines that a violation of [2-2-121](#)(4)(b) has occurred, the

commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part.