Slide 1

Welcome to the State Ethics Commission's Conflicts of Interest training. I look forward to spending the next forty minutes or so with you discussing Maryland's Public Ethics Law and in particular the conflicts of interest provisions that apply to you and me. This may be the only time during your employment with the State that you receive this training, which is designed to help you understand and conform your conduct to the Law. Therefore, I would ask one favor – that you put away your cell phones and focus on the presentation so that you don't miss an important point that could come up some time in the future.

Slide 2

The agenda for today's presentation is quite straight-forward. I will provide you with some brief historical information concerning the Public Ethics Law, spend most of my time addressing the conflicts of interest provisions in the Law, touch briefly on the Law's financial disclosure requirements, and close by leaving you with information concerning resources that are available to help you navigate your way through the Public Ethics Law and deal with issues that may confront you.

Slide 3

A high degree of public trust in elected leaders and government officials is one of the basic underpinnings of a representative government. If you aren't old enough to have experienced firsthand the Nixon Watergate scandal of the early 70s, you probably have studied about it. It shook public trust in government and eventually led to Nixon's resignation as president. The Federal Ethics in Government Act was passed in 1978 following the Watergate scandal, and was intended to bring transparency to the financial connections of government officials. Several States followed the federal example by either strengthening or passing for the first time ethics laws of their own. Maryland enacted the Public Ethics Law in 1979.

Slide 4

As you can see from this slide, the Law is intended to serve several purposes. Strong state ethics laws, like Maryland's Public Ethics Law, serve a vital interest. They define the rules of conduct for State officials and employees. They help ensure voters' trust in policymakers and political institutions by monitoring compliance with ethics laws and ensuring ethical conduct by those under their jurisdiction. Ethics commissions represent the public's interest and work to maintain public trust in government.

Slide 5

The responsibility for administering the Public Ethics Law falls to three separate bodies: the General Assembly's Joint Committee on Legislative Ethics is the advisory body for members of the General

Assembly with respect to the conflicts of interest provisions of the Law; the Commission on Judicial Disabilities or another body designated by the Court of Appeals is the advisory body for Judges and certain other judicial officers; and the State Ethics Commission is the advisory body for all other employees and officials of the legislative and judicial branches, and all employees and officials of the executive branch. You fall under the authority of the State Ethics Commission in the administration of the Law, and for our purposes today all discussion concerning opinions and interpretations of the Law refers to those opinions and interpretations of the State Ethics Commission.

Slide 6

Of the five members of the Commission, three are directly appointed by the Governor, one member is nominated by the President of the Senate, and one member is nominated by the Speaker of the House. The Commissioners serve staggered five-year terms and may serve no more than two consecutive terms.

In carrying out its duty to administer the Law, the Commission performs an array of functions. It provides advice to officials and employees who seek guidance on the application of the Ethics Law to particular situations, implements the financial disclosure program, regulates lobbyists, provides mandatory training to public officials and lobbyists, and takes enforcement action in situations involving possible violations of the Law.

The Commission appoints the Executive Director, General Counsel and Staff Counsel, positions which are identified in the Law. The Commission's remaining nine staff positions are hired by the Executive Director.

Slide 7

During the next series of slides I will be discussing the major provisions in the Ethics Law that deal with conflicts of interest. I will use scenarios to help illustrate how the Law applies. As I will repeat again at the end of the presentation, if you have questions about the application or interpretation of any of the provisions of the Law, contact the Commission staff for guidance.

Slide 8

You are looking for a second job and find one with a tech company that provides the income and flexible hours you need. The company has a contract with your agency. Can you accept the position?

Slide 9

This scenario involves the Law's secondary employment restriction. The short answer to the question is "no, you cannot accept the position", but we will be discussing exceptions to the restriction shortly. The secondary employment restriction provides that you may not have additional employment with any business that is regulated by your agency or does business with your agency. The rationale behind the restriction makes a great deal of sense. Many outside activities cannot be neatly separated from your official duties. Furthermore, as a State employee, you are presumed to, first and foremost, have a loyalty to the State. The Law recognizes that outside employment also creates a certain loyalty to the second employer. And in some instances, for example, when your outside employer does business with your agency or is regulated by your agency, a possible conflict arises because of this "divided" loyalty, which the Law addresses by prohibiting the outside employment.

The Law also prohibits employment which would impair your impartiality or independent judgment. While the previous conflict is generally easy to identify, since you can determine if a prospective outside employer is regulated by or does business with your agency, the "impairment" restriction requires a little more thought. Let's consider an example.

Assume you have a position working for a legislator in the General Assembly. You also have experience and education in bookkeeping. A lobbying firm, aware of your bookkeeping background, offers you part time employment at night as its bookkeeper. You can use the extra money and the hours fit nicely with your schedule. You're familiar with the restrictions in the Ethics Law, and conclude that there is not a problem. You note that the General Assembly does not do business with the lobbying firm, nor does the General Assembly regulate lobbyists. You will recall from my earlier comments that the Ethics Commission regulates lobbyists, not the General Assembly. But before accepting the job, you must also consider the "impairment" provision. Say that you take the job and one morning a lobbyist from your lobbying firm calls you and asks for an emergency meeting with your legislator to discuss a bill that was introduced that could be highly detrimental to one of the firm's clients. You look at the calendar and advise that while your legislator is very busy, you can squeeze the lobbyist in at 1:00 p.m. Later in the day a lobbyist with another firm, with which you have no affiliation, calls you with a similar request. You check the calendar and advise this other lobbyist that your legislator is extremely busy, and the first opening is the following week. Clearly, your impartiality and independent judgment has been impacted by your loyalty to your outside lobbying employer, whom you treated differently than the other lobbyist with whom you had no affiliation. While impairment situations are not always obvious, it is important for you to think through the implications of every outside employment opportunity, and to seek guidance from the Ethics Commission as appropriate.

The Law does allow the Ethics Commission to grant exceptions to the secondary employment restrictions by regulation, and the Commission has adopted regulations which provide criteria to be considered when exceptions to the secondary employment restrictions are requested. The Commission has published a memorandum, posted on its website, which discusses the considerations that go into the Commission's review of a secondary employment exception request. In a nutshell, the Commission considers whether your State duties are somehow involved with the regulatory or contractual relationship with the outside employer, or whether in your outside position you have duties related to the regulatory or contractual relationship with your agency. If either in your State position or your outside position you are involved in that relationship, you are not likely to obtain an exception from the Commission. On the other hand, if your work in both capacities does not involve you in the regulatory or contractual relationship, you stand a better chance of obtaining an exception from the Commission.

There is one more point concerning the exception process that needs to be addressed. The Commission has placed on its website the form to be used to seek a secondary employment exception entitled "Request for Review of Secondary Employment", Form #25. This is the form you submit to the Commission when you have a secondary employment situation for which you require an exception. The form asks you to provide certain information concerning your State duties and information concerning your outside employer and the duties you will be performing for that outside employer. The form is signed by you and then passed on to your immediate supervisor and department head for approval. Please be aware that the Commission will not consider any request for review of secondary employment that has not received the approval of the appropriate agency officials.

Slide 10

While you do not participate in the company's day-to-day affairs, you are a part owner of a technology company that was just awarded a contract with your agency. Can you retain your interest in this company?

Slide 11

This scenario involves the Law's financial interest restriction. The short answer to the question is "no, you cannot retain your interest in the company", but we will be discussing exceptions to the restriction shortly. The financial interest restriction resembles the secondary employment restriction we just discussed, providing that you may not have a financial interest in a business that is regulated by your agency or does business with your agency. The rationale behind the financial interest restriction is similar to that for the secondary employment restriction – it seeks to preclude a State employee from being involved in a situation in which the employee's loyalty is divided between the State and the entity where the financial interest exists.

Like secondary employment, the Law does allow the Ethics Commission to grant exceptions to the financial interest restriction by regulation, and the Commission has adopted regulations which provide criteria to be considered when exceptions are requested. Similar to the secondary employment exception, the Commission considers whether your State duties are somehow involved with the regulatory or contractual relationship with the entity in which you hold the financial interest. If in your State position you are involved in that relationship, you are not likely to obtain an exception from the Commission.

Slide 12

To have a financial interest in an entity requires actual ownership of more than 3% of a business or ownership of securities (for example, stocks or bonds) that represent more than 3% of a business. Note here that ownership by your spouse is attributed to you. You can also have a financial interest in an entity if your interest (which again could include stocks or bonds) entitles you to receive, or entitled you to receive in the past 3 years, more than $1,000 per year. The Ethics Commission has determined that ownership of shares of stock with a value of more than $1,000, regardless of whether you receive interest or dividend payments on that stock, satisfies the requirement for financial interest. To demonstrate what this means, if your agency entered into a contractual relationship with Google, and you owned more than $1,000 worth of Google stock, you would have a prohibited financial interest which would require that you divest yourself of some of your stock, so that your ownership does not exceed $1,000, or obtain an exception from the Commission.

Slide 13

You have been assigned to be a member of a search committee tasked with interviewing candidates for a vacant position in your office. Current applicants include your sister-in law, your daughter, and your best friend. Can you participate?

Slide 14

This scenario involves the Law's participation restriction. In short, you are not permitted to participate in a "matter" if: 1) you have an interest in it; 2) a qualifying relative has an interest in it; 3) a company that employs you or a qualifying relative has an interest in it; or 4) a company with which you or a qualifying relative is arranging prospective employment has an interest in it.

The term “matter” has been interpreted by the State Ethics Commission quite broadly, to include any “proceeding, application, submission, request for ruling, or other determination, contract, claim, case or other such particular matter...” The Law defines “qualifying relative” to include your spouse, parent, child or sibling.

Turning to the scenario, it is clear that a hiring decision is a matter covered by the participation provisions of the Law. Whether or not you can participate is determined by whether or not you, or one of your qualifying relatives, has an interest in the matter. The scenario identified the applicants as including your sister-in-law, your daughter, and your best friend. Within that group only your daughter meets the definition of qualifying relative. So if we changed the scenario to remove your daughter as an applicant but leave your sister-in-law and best friend as applicants, the participation provisions would not require you to remove yourself from the process. However, there is another provision in the Ethics Law that we will discuss in more detail later, which prohibits you from intentionally using the prestige of your office for your private gain or for the private gain of another. With your sister-in-law and best friend as candidates for the open position, you may risk running afoul of the prestige of office restriction by remaining on the search committee, and you most certainly will if you attempt to use your position to give the nod to one of these individuals.

If the search committee planned to interview 9 candidates for the position, one of whom was your daughter, do you think you could address the problem by recusing yourself from her interview but participating in the interviews of the other eight? The answer would be no, because the hiring process is the matter that brings into play the Law's participation restrictions. Your continued involvement in this matter, in which your daughter has an interest, gives you an opportunity to affect the outcome in a manner favorable to your daughter, even if you do not participate in her interview. You should recuse yourself from the hiring process entirely.

Slide 15

In your position you review and approve payments for invoices submitted by contractors, including invoices submitted by Acme Engineering, which employs your sister. Can you participate?

This scenario involves a variation of the participation provisions we've already discussed. Remember that the Ethics Law says you are not permitted to participate in a "matter" if a company that employs you or a qualifying relative has an interest in it. Here Acme employs your sister, a qualifying relative, and Acme clearly has an interest in you approving the invoice for payment. You cannot participate in the review of that invoice. In such situations the Commission recommends that you develop a plan, approved by your supervisor, to deal with situations such as this if they tend to recur – for example, if Acme submits monthly invoices. Your supervisor may agree to step in and handle the invoice review in situations where you have a conflict. A co-worker who does similar work may handle the task for you. As a rule, the Commission recommends not delegating the task to one of your subordinates, as this raises concerns about influence on your part, real or perceived. You should make efforts where possible to avoid even this perception.

Slide 16

The Law does provide for exceptions to the participation restrictions in certain circumstances. We will focus on the situation addressed in the first bullet, exceptions permitted by State Ethics Commission regulation. Those covered by the second bullet apply in rather limited situations, and it is unlikely you will encounter such situations in the course of your State employment.

In considering whether to grant you a participation exception, the Commission's regulations require that you are supported in your request by the appropriate agency officials. Assuming the agency supports the request, the Commission will look at a number of factors, including the nature of the work performed by your qualifying relative (for example, does your relative actually work on the contract with your agency). The Commission will also look at the nature of the relationship between you and your qualifying relative (in other words, how close is the relative to you, both in terms of the nature of the relationship and geographic distance). In this regard, note that the Commission has never granted a participation exception when the conflict involved a spouse. The Commission will also consider any safeguards instituted by the agency to deal with the conflict.

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You will recall the previous scenario involved you reviewing and approving payments for invoices submitted by contractors, including invoices submitted by Acme, which employs your sister. How would you respond to this scenario question if your sister's job with Acme was in Georgia and she performed no work on the contract with your agency?

These added circumstances do not change the fact that initially, you are not permitted to participate in reviewing and approving Acme invoices. Remember that the Ethics Law says you are not permitted to participate in a "matter" if a company that employs you or a qualifying relative has an interest in it. Here Acme employs your sister, a qualifying relative, and Acme clearly has an interest in your approval of the invoice for payment. The Law does not include an analysis of the role of the qualifying relative or her geographic location. But the exception criteria applied pursuant to the Commission's regulations do consider those factors. While each situation is decided by the Commission on a case by case basis, your sister's lack of involvement with the agency contract and her location in Georgia make a good case for an exception. Remember that your request for an exception requires the support of your agency.

<u>Slide 18</u>

Your agency employs both you and your spouse. While initially you work in different departments, you are later promoted to be the head of the department where your spouse works. Would this situation be appropriate under the Ethics Law?

Here again we confront the Law's participation restrictions. Remember that you are not permitted to participate in a matter if a qualifying relative has an interest in it. And the Law defines "qualifying relative" to include your spouse, parent, child or sibling. If a qualifying relative, which would include your spouse, is in your "chain of command", that situation poses a participation problem. As your spouse's department head, you would normally be required to participate in all sorts of matters in which he or she has an interest, including but not limited to work assignments, leave scheduling, promotions and other personnel matters. And even if there are one or more intermediate supervisors between you and your qualifying relative, you still would have the ultimate responsibility for supervising him or her. Also, it is important to keep in mind that it is your responsibility to adhere to the requirements of the Law. Your agency may promote you to a position that causes a participation problem such as the one described in the scenario, but if such a situation occurs, it is up to you to recognize the problem and to seek guidance from the Ethics Commission. “My agency told me it was okay” is not a defense.

Slide 19

You assisted your agency in preparing an RFP seeking bids to provide management services for a construction contract. The contract is awarded, and you subsequently decide to leave the State and take a job with the successful bidder. Your job is to manage this contract. Can you do so?

Slide 20

In this scenario we encounter the post-employment restrictions. Up until now we have been discussing provisions of the Ethics Law that affect you during your employment with the State. This provision places certain restrictions on what you can do once you leave State service. The Law says that you are not permitted to work for anyone or any entity, to include your own business, on a case, contract or specific matter if it is one that you significantly participated in during your State employment.

To put it another way, the Law does not allow you to “switch sides” on a contract or other matter by first providing assistance to the State and then taking that knowledge with you to assist an outside person or entity on that very same matter.

It is important to note two things about this restriction. First, it is not time limited. In other words, the restriction lasts for as long as the case, contract or specific matter remains in existence. This is not like those "cooling off" periods you've probably heard about that may restrict an employee's ability to work in a certain area for a definite period of time. Second, the restriction is tied to a very specific matter or contract. This means that while you may not be able to leave your State position to work for an employer on a specific contract you had been working on in your State capacity, you may be able to go to work for that same employer on other contracts in which you had no involvement as a State employee. Because these post-employment situations can be very fact specific, and sometimes have consequences for your new employer's ability to bid on certain contracts, we encourage you to contact the Commission when post-employment questions arise.

Slide 21

You are invited to lunch by a contractor who has submitted a bid on a contract with your agency. The contractor wants to pay. Can you accept? Can you accept the company logo jacket the contractor offers you?

Slide 22

Here we're dealing with the gift prohibitions in the Public Ethics Law. In the first bullet you should take note of an important point. You are not allowed to solicit a gift in your capacity as a State employee, PERIOD. The Commission has recognized an exception to this rule which it calls "Agency Fundraising." This exception may apply when an agency satisfies certain criteria and the fundraising is in support of the agency's mission. In such a case, the gift being solicited is for the agency, not for you personally. Putting this agency fundraising exception to the side, the easiest way to approach this provision of the Law is to remember "no solicitation."

The Law also places restrictions on the acceptance of unsolicited gifts – those that are offered to you without any encouragement on your part. Not all unsolicited gifts pose a problem. The Law prohibits the acceptance of unsolicited gifts from four specific sources. The Commission has informally labelled these gift givers as controlled donors. The four controlled donor categories found in the Ethics Law are the following: 1) persons or entities that do business with, or seek to do business with, your agency; 2) persons or entities that are regulated by your agency; 3) persons who lobby your agency; 4) persons who have a financial interest that could be specifically affected by your performance of your official duties.

Going back to the scenario, you have to decide if you can accept the contractor's offer to buy you lunch and his offer of a company logo jacket. The Law says you cannot accept a gift from a controlled donor, as that term is used by the Ethics Commission. One of the categories of controlled donor is a person or entity that does or seeks to do business with your agency. The lunch and the logo jackets are clearly gifts, and fall squarely within the prohibition.

As with other restrictions in the Law, there are exceptions to the gift prohibitions. Recognizing that business is often transacted over a meal, the Law permits you to accept a gift of meals or beverages “in the presence of the donor”, and I’ll repeat, in the presence of the donor. The Law does not set a dollar limit on the value of the meal and beverage that can be accepted, other than it should be reasonable. This exception allows you to go to lunch with the contractor as described in the scenario, and the contractor may pay. If you are a financial disclosure filer, you must report the gift on your annual financial disclosure statement if it exceeds $20 in value.

There is also an exception that allows you to accept unsolicited gifts of nominal value, which the Commission has determined must not exceed $20 in cost. Remember, this $20 limit does not apply to meals and beverages. Applying this exception to the company logo jacket discussed in the scenario, presumably the value of a jacket exceeds $20. Since there are no other exceptions to the gift restrictions that would apply to the logo jacket, you would not be able to accept it.

Occasionally a controlled donor sponsors a conference or training program that entails an overnight stay, travel costs and meal expenses, and the sponsor offers to cover these expenses for you. The Law provides an exception that allows you to accept reasonable expenses from the sponsor for such events, but only if you are a speaker, participant in a panel discussion, or serving in a similar type of capacity.

There are other, less frequently encountered exceptions to the gift prohibitions. When a question arises concerning your ability to accept a gift, you should contact the Commission staff for guidance.

Slide 23

Your best friend's son has applied for a position in another department within your agency. You enjoy a good relationship with that department. Your friend knows of the relationship and asks you to put in a good word for his son with the person who is doing the hiring. Can you do so?

Slide 24

This scenario involves the Law's prohibition on intentionally using the prestige of your office for your private gain or for the private gain of another. We previously touched upon this provision when we discussed the Law's participation restrictions and noted possible prestige of office concerns where you are involved in a hiring process when some of the job applicants have connections to you.

The prestige of office restrictions has two components. The first, which applies to this scenario, prohibits you from using the influence of your position for your private gain or the private gain of another. Under this application of the provision, you cannot make the call described in the scenario in an attempt to use your position to influence the hiring of your friend's son. Note the difference between taking the action described in the scenario and simply serving as a reference. As a reference, you would have a passive role, responding to a call from a hiring official seeking your comments. This is much different from using your position to inject yourself into a hiring decision as addressed in the scenario.

The second component of the prestige provision prohibits you from using State resources for your private gain or the private gain of another. For example, if you had an outside business selling real estate, it would be a violation of the prestige of office provision to use resources such as your agency's copy machine, fax machine, e-mail as well as the time you're supposed to be devoting to your State job, to further the business.

Slide 25

You learn of plans to construct a new building to house your agency and the location has been identified. You use that information to purchase some property adjacent to the location, anticipating it will be needed for the project and hoping to sell it to the State at a profit. Can you do so?

Slide 26

This provision probably speaks for itself. If you have access to information that you gained by reason of your employment with the State, you may not use that information for your personal economic benefit nor may you provide the information to someone else to use for his/her economic benefit. The Ethics Law does not get any more straight-forward than that.

Slide 27

We will very briefly touch on the financial disclosure requirements of the Ethics Law. State employees who are required to file financial disclosure statements are also required to take a two-hour training course that addresses conflicts of interest and financial disclosure within six months of being identified as a filer. The information presented here does not satisfy this mandatory training requirement. If you are a financial disclosure filer and have not yet met this training obligation, you must take the automated training available through your financial disclosure account or attend one of the Commission's live training sessions conducted at its office in Annapolis.

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The Ethics Law mandates that employees who are identified as financial disclosure filers must submit their statements on three distinct occasions: 1) an initial statement within 30 days of occupying a position that has been designated a filing position; 2) annually by April 30th; and 3) a termination statement within 60 days of leaving State service. The Ethics Law requires that all statements be filed electronically.

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All of the information you are required to disclose, assuming you are a filer, is described on this one slide. Among the financial interests the Law requires you to list are interests in real property, which include property you own or rent, wherever it is located, and interests in corporations, which include stock holdings, whether or not the company issuing the stock does business with the State. The good news, however, is that interests in mutual funds need not be reported. Other items that you must disclose are any gifts you received with a value in excess of $20 from those controlled donors we talked about earlier, debts you owe to entities doing business with the State, and any employment or business interests (other than your State employment) for you, your spouse and dependent children.

The point in creating this very busy slide is to indicate that filing the statement is not complicated. The introduction of electronic filing several years ago has added to the simplicity because once you file your initial statement, the next time you file the system populates your new form with the information from your previous statement. Your only obligation is to review it carefully and edit when necessary to reflect changes since the prior filing.

Slide 30

Your financial disclosure statement is a public document. However, the Law requires a person who is interested in reviewing a financial disclosure statement to appear in person at the Commission's office and identify himself or herself. If the person wishes to make a copy of a financial disclosure statement, he or she can do so after paying the appropriate copying fees.

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When you prepare your financial disclosure statement you will be asked if you wish to be notified if someone looks at it. We recommend checking YES.

Also, when you file your financial disclosure statement, if you are required to disclose information concerning your investments, the electronic system allows you to upload year-end brokerage statements if they contain all of the information the Law requires. If you take this option, be sure to redact personal information such as account and social security numbers from those documents before uploading them.

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A critical part of our mission is to make certain you have access to resources that will assist you in meeting your obligations to comply with the Public Ethics Law. This presentation is one such resource.

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Our website is loaded with information intended to provide you what you need to know about the Law. From the website you can access a link to the Commission's financial disclosure filing system. You can also click on the "State Employees & Officials" tab to obtain general information on conflicts of interest and financial disclosure, and to access informational memos on various topics including secondary employment, gifts, post-employment, political activity as well as many others.

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If you are unable to locate what you need on our website, or if you just feel the need to speak with someone, you can call the Commission daily during the hours of 8:00 a.m. and 4:30 p.m. You will reach a "live" person who can assist you or connect you with a Staff member who has the expertise you need.

<u>Conclusion</u>

We hope you found the information useful to increasing your understanding of Maryland's Public Ethics Law. We always welcome feedback, so please feel free to share any comments you may have on this training. Thank you and enjoy the rest of your day.