

MASSACHUSETTS DEPARTMENT OF CORRECTION

CONFLICT OF INTEREST AND

AMERICAN CORRECTIONAL ASSOCIATION CODE OF ETHICS

103 DOC 215

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MASSACHUSETTS DEPARTMENT OF CORRECTION	DIVISION: PDCU
TITLE: CONFLICT OF INTEREST AND AMERICAN CORRECTIONAL ASSOCIATION CODE OF ETHICS	NUMBER: 103 DOC 215

PURPOSE: To establish the Department of Correction policy concerning conflict of interest and the American Correctional Association (ACA) Code of Ethics, and ensure that persons connected with the agency will not use his or her official position to secure special privileges or advantages.

REFERENCES: M.G.L. Chapter 124, Section 1 (c) and (q).

APPLICABILITY: Staff.

PUBLIC ACCESS: Yes

LOCATION: DOC Central Policy File.
Institution Policy File.
Department Personnel Policy Manual.
Inmate Library.

RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:

- Director of Policy Development and Compliance Unit
- Assistant Deputy Commissioners
- Superintendents and Division Heads

EFFECTIVE DATE: 4/18/2011

CANCELLATION: 103 DOC 215 cancels all previous Department policy statements, bulletins, directives, orders, notices, rules and regulations regarding conflict of interest and the American Correctional Association Code of Ethics which are inconsistent with 103 DOC 215.

SEVERABILITY CLAUSE: If any part of 103 DOC 215 is, for any reason, held to be in excess of the authority of the Commissioner, such decision shall not affect any other part of 103 DOC 215.

215.01 STATE ETHICS COMMISSION

1. The State Ethics Commission (SEC) was created to administer the conflict of interest and financial disclosure laws, M.G.L., Chapter 268A and M.G.L., Chapter 268B. The SEC has published A Practical Guide to the Conflict of Interest Law and Financial Disclosure Law for State Employees ("Guide") which clarifies and provides many examples of the prohibitions set forth in the laws. A copy of this guide is available in the Department of Correction (DOC) Division of Human Resources for reference.
2. A DOC employee may call the SEC's Legal Division at (617) 727-0060 for informal, confidential advice on the conflict of interest law, or he/she may seek a written advisory opinion from the SEC. Additional information on how to obtain legal advice is set forth in the law.

215.02 STANDARDS OF CONDUCT

Section 23 of Chapter 268A sets forth the following Standards of Conduct:

1. No current employee of the DOC shall knowingly, or with reason to know:
 - a. Accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his/her public office.
 - b. Use or attempt to use his/her official position to secure for himself/herself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.
 - c. Act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly

enjoy his/her favor in the performance of his official duties, or that he/she is likely to act or to fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his/her appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such conclusion.

NOTE: Substantial value has been set at fifty dollars (\$50.00) by the courts and the SEC.

2. No current or former employee of the DOC shall knowingly, or with reason to know:
 - a. Accept employment or engage in any business or professional activity which will require him/her to disclose confidential information which he/she has gained by reason of his/her official position or authority.
 - b. Improperly disclose material or data within the exemptions to the definition of public records as defined by Section 7 of M.G.L., Chapter 4 and were acquired by him/her in the course of his/her official duties nor use such information to further his/her personal interest.

215.03 BRIBES, GIFTS, OFFERS, AND PROMISES TO DEPARTMENT EMPLOYEES

1. Bribes, Gifts, Offers and Promises to Influence Official Acts. A DOC employee is prohibited from corruptly seeking or receiving bribes, gifts, promises, or anything else of value from any person(s) including an inmate in return for being influenced in the performance of official acts. The thing of value which is solicited or accepted need not be money (for example, trips or improvement to one's home are covered, as well).

M.G.L., Chapter 268A, Section 2 should be consulted for more specific information.

2. Additional Compensation or Gratuities for Official Acts. A DOC employee is prohibited from seeking or receiving any additional compensation, tips, gratuities, or anything else of substantial value over and above his/her regular pay for performance of official duties. As in the case of subsection 1 above, the thing of value which is solicited or accepted need not be money. The section of the law dealing with "gifts" should be consulted for additional information.

215.04 LIMITS ON PRIVATE ACTIVITIES

1. A DOC employee is prohibited from acting as an agent or attorney for a private party in relation to any particular matter of direct and substantial interest to the Commonwealth.
2. The conflict of interest law imposes fewer restrictions on special state employees. The law should be consulted for the specific restrictions.

215.05 FORMER DEPARTMENT EMPLOYEES AND PARTNERS OF PRESENT AND FORMER DEPARTMENT EMPLOYEES

1. A former DOC employee is prohibited from acting as an agent or attorney for, or receiving compensation directly or indirectly from, anyone other than the Commonwealth or a state agency in connection with any particular matter in which the state is a party or has a direct and substantial interest and in which he/she participated as a state employee.
2. A former DOC employee is prohibited for one year after leaving state service from appearing before any court or state agency on behalf of anyone other than the state in connection with a particular matter in which the state is a party or has a direct and substantial interest, and the matter was within the employee's official

responsibility within the two-year period before leaving state service.

3. A former DOC employee is prohibited from serving as a legislative agent (lobbyist) for anyone other than the Commonwealth for one year after the employee leaves the DOC.
4. A former DOC employee whose salary was not less than in Step 1 of Job Group M-VII in the management salary schedule in M.G.L., Chapter 30, Section 46C is prohibited for one year after leaving state service from becoming an officer, or employee of a business organization which is or was a party to any privatization contract as defined in M.G.L., Chapter 7, Section 53 and in which contract he/she participated in as a state employee unless, before the termination of his/her state employment, the Governor determines in writing filed with the SEC that such participation did not significantly affect the terms or implementation of such contract.
5. The partner of a current DOC employee is prohibited from acting as an agent or attorney for anyone other than the state in connection with a particular matter in which the state is a party or has a direct and substantial interest and in which the DOC employee has ever participated or over which he/she has official responsibility.
6. The partner of a former DOC employee is prohibited for one year after the former employee leaves state service from engaging in any activity in which the former employee is prohibited from engaging in subsection 1 of this section.
7. A present or former special state employee may aid or assist another person for compensation in the performance of work under contract with or for the benefit of the Commonwealth provided that the Commissioner has certified in writing that the interest of the Commonwealth requires such

aid or assistance and the certification has been filed with the SEC.

215.06 RESTRICTIONS ON OFFICIAL ACTIONS

1. Except as provided in subsection 2 below, a DOC employee, in the performance of his/her official duties, is prohibited from participating in a particular matter in which the following people or entities have a financial interest:
 - a. The employee.
 - b. The employee's immediate family.
 - c. The employee's partner.
 - d. A business organization in which the employee is serving as an officer, director, trustee, partner or employee.
 - e. Any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment.
2. Any DOC employee whose duties would otherwise require him/her to participate in such a particular matter shall advise the Commissioner and the SEC in writing of the nature and circumstances of the particular matter and make full disclosure of such financial interest. The Commissioner, pursuant to M.G.L., Chapter 268A, Section 6, shall reassign the particular matter to another employee, or make a written determination that the situation does not constitute a conflict of interest. Further information concerning this process is contained in the law.

215.07 NEPOTISM

1. The SEC has issued Advisory No. 11 regarding nepotism. The advisory explains to public officials and employees what constitutes a "nepotism violation" under the state's conflict

of interest law. Specifically, under the law, a DOC employee is prohibited from engaging in the following acts of nepotism:

- a. Hiring an immediate family member.
 - b. Any significant involvement in the hiring process regarding a family member (e.g. interviewing or creating a test for applicants).
 - c. Any significant involvement in the reappointment, promotion, reclassification, demotion, or firing of an immediate family member.
 - d. Determining a family member's salary including approving "automatic" increases such as annual step increases.
 - e. Conducting a job performance review of a family member.
 - f. Day-to-day supervision of a family member.
 - g. Delegating the task of dealing with an immediate family member to a subordinate.
2. All DOC employees are advised that certain relatives such as cousins, aunts and nephews are not immediate family members for purposes of the conflict of interest law. As such, actions employees may take regarding said kinds of relatives would not constitute a nepotism violation. However, actions DOC employees may take regarding these relatives may violate the standards of conduct section of the conflict law (see 215.02 1 (c) of this policy). Therefore, DOC employees shall notify the Commissioner in writing of any family relationship that may violate the standards of conduct section. A copy of the notification shall be filed by said employees with the SEC.

215.08 FINANCIAL INTERESTS IN STATE CONTRACTS

1. A DOC employee is prohibited from having a direct or indirect financial interest in a contract made by a state agency. Employment also constitutes a contract with the state. Therefore, generally, a DOC employee is prohibited from holding more than one paid position with a state agency.
2. The prohibition in subsection 1 above does not apply if the financial interest of the employee consists of the ownership of less than one percent of the stock of a corporation. There are a number of other exemptions to this prohibition which are set forth in M.G.L., Chapter 268A, Section 7.

215.09 FINANCIAL DISCLOSURE

1. In accordance with M.G.L., Chapter 268B, each DOC employee in a major policy-making position is required to file an annual Statement of Financial Interests with the SEC. This includes, but is not limited to, such positions as commissioner, deputy commissioner, assistant deputy commissioners, superintendents and major division heads.
2. Each year in accordance with 930 CMR 2.00, State Ethics Commission Regulations on the Designations of Public Employees, the Commissioner is required to submit a list of major policy-making positions within the DOC and identify all employees who are or have been in those positions for 30 days or more during the reporting year. Prior to this, the Commissioner shall notify each individual so designated and inform him/her that he/she is obligated to file a Statement of Financial Interests with the SEC on or before May 1st for the preceding calendar year.

The State Ethics Commission shall furnish each such individual with a package of materials necessary for compliance with financial disclosure requirements.

3. In addition, in accordance with 930 CMR 2.00, the Commissioner is required to submit to the Ethics Commission the names of DOC employees newly appointed (during the middle of the calendar year) to major policy-making positions for addition to the DOC list of major policy-making positions.

Prior to this, the Commissioner shall notify said individuals that they are obligated to file a Statement of Financial Interests with the SEC within 30 days of assuming the major policy-making position. The SEC shall furnish each individual with a package of materials necessary for compliance with financial disclosure requirements.

4. A designated DOC employee must report information such as the following on his/her financial disclosure form:
 - a. Income and any outside private employment.
 - b. Business ownership and equity.
 - c. Associations with business and non-government entities.
 - d. Real property owned in Massachusetts, investment and rental properties, real property transfers, mortgage loan information, and mortgage receivable information.
 - e. Securities and investments.
 - f. Gifts, honoraria and reimbursements.
 - g. Certain information pertaining to family members (e.g., spouses and any dependent children residing in the filer's household must disclose where they work).

NOTE: The foregoing is intended to provide a summary of the kinds of information that an employee must report. Exact descriptions of what

must be reported are contained in the Instructions for Filing Statements of Financial Interests and on the Statement Form itself.

215.10 POLITICAL ACTIVITIES

1. In accordance with M.G.L., Chapters 55 and 56 and except as provided in subsection 2 of this section, a DOC employee is prohibited from:
 - a. Directly or indirectly soliciting money or anything of value for a political campaign or for any other political purpose.
 - b. Giving money or other things of value to a person in the service of the Commonwealth for a political purpose.
 - c. Soliciting money or other things of value in a public building for a political campaign or for any other political purpose.
 - d. Discharging, promoting or demoting an officer or employee of the DOC for a political reason.
 - e. Using his/her official authority to coerce political action or interfere with an election.
2. Massachusetts law does not prohibit a DOC employee from working in a political campaign generally, or giving money or other things of value to an official campaign committee. Also, state law does not prohibit a person employed by the DOC from seeking elective office, although DOC policy prohibits an employee seeking such office in cases that pose an appearance of conflict of interest. Any employee seeking elective office shall notify the Commissioner of his/her intent.
3. In accordance with federal law (5 USC 7301 et seq., the Hatch Act), a DOC employee whose principal employment is connected with an

activity which financed in whole or in part by federal funds is prohibited from:

- a. Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for elective office.
- b. Attempting to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purpose.
- c. Being a candidate for office, except on a non-partisan election.

215.11 PENALTIES

The conflict of interest and financial disclosure laws described in the preceding sections carry both civil and criminal penalties. Criminal penalties include fines of up to \$5,000 and imprisonment of up to three years, and civil penalties include fines of up to \$2,000. In addition, disciplinary action may be taken by the DOC. More detailed information is contained in the applicable statutes.

215.12 EXECUTIVE OFFICE OF PUBLIC SAFETY POLICY REGARDING OUTSIDE CONSULTING AND EMPLOYMENT

1. Prior to commencing or continuing consulting or outside employment (including teaching), each DOC employee holding a major policy-making position shall obtain the prior written consent of the Secretary of Public Safety for such consulting or outside employment. For this purpose, the term "major policy-making position" shall have the same meaning as it does in M.G.L., Chapter 268B (i.e.: a person required to file an annual Statement of Financial Interest).
2. Any such employee who has engaged in consulting or outside employment (including teaching) shall transmit a copy of his/her Statement of Financial Interests to the Executive Office of Public

Safety's General Counsel when, or promptly after, it is filed with the SEC.

215.13 AMERICAN CORRECTIONAL ASSOCIATION CODE OF ETHICS

1. The Massachusetts DOC subscribes to the American Correctional Association Code of Ethics as specified in subsection 2 below.
2. Preamble: The American Correctional Association expects of its members unfailing honesty, respect for the dignity and individuality of human beings and a commitment to professional and compassionate service. To this end, we subscribe to the following principles:
 - a. Members shall respect and protect the civil and legal rights of all individuals.
 - b. Members shall treat every professional situation with concern for the welfare of the individuals involved and with no intent of personal gain.
 - c. Members shall maintain relationships with colleagues to promote mutual respect within the profession and improve the quality of service.
 - d. Members shall make public criticism of their colleagues or their agencies only when warranted, verifiable and constructive.
 - e. Members shall respect the importance of all disciplines within the criminal justice system and work to improve cooperation with each segment.
 - f. Members shall honor the public's right to information and share information with the public to the extent permitted by law subject to the individuals' right to privacy.

- g. Members shall respect and protect the right of the public to be safeguarded from criminal activity.
- h. Members shall refrain from using their positions to secure personnel privileges or advantages.
- i. Members shall refrain from allowing personal interest to impair objectivity in the performance of duty while acting in an official capacity.
- j. Members shall refrain from entering into any formal or informal activity or agreement which presents a conflict of interest or is inconsistent with the conscientious performance of duties.
- k. Members shall refrain from accepting any gifts, services, or favors that is or appears to be improper or implies an obligation inconsistent with the free and objective exercise of professional duties.
- l. Members shall clearly differentiate between personal views/statements and views/statements/positions made on behalf of an agency or Association.
- m. Members shall report to appropriate authorities any corrupt or unethical behaviors in which there is sufficient evidence to justify review.
- n. Members shall refrain from discriminating against any individual because of race, gender, creed, national origin, religious affiliation, age, disability or any other type of prohibited discrimination.
- o. Members shall preserve the integrity of private information; they shall refrain from seeking information on individuals beyond that which is necessary to implement responsibilities and perform their duties;

members shall refrain from revealing nonpublic information unless expressly authorized to do so.

p. Members shall make all appointments, promotions, and dismissals in accordance with established civil service rules, applicable contract agreements and individual merit, rather than furtherance of personal interests.

q. Members shall respect, promote, and contribute to a work place that is safe, healthy, and free of harassment in any form.

215.14 COMMUNICATION OF THIS POLICY

It is the responsibility of each superintendent, major division head, or their designee, to review this policy with each new employee during orientation and provide such employee with a summary of the following in accordance with 103 DOC 208:

1. A Practical Guide to the Conflict of Interest Law and Financial Disclosure Law for State Employees.
2. A Guide to Political Activity for State, County and Municipal Employees.
3. American Correctional Association Code of Ethics.

215.15 IN-SERVICE TRAINING

In order to ensure that DOC employees understand and comply with this policy, the Director of Human Resources shall develop, in cooperation with the Department Training Manager, any necessary in-service training programs.