

# State Ethics Commission

## 930 CMR 1.00: RULES OF PRACTICE AND PROCEDURE

### 1.01: Formal Rules

#### (1) Scope, Construction and Definitions.

(a) **Scope.** 930 CMR 1.00 governs the conduct of Adjudicatory Proceedings of the State Ethics Commission.

(b) **Construction.** 930 CMR 1.00 shall be construed to secure a just and speedy determination of every Adjudicatory Proceeding.

(c) **Definitions.** The following words when used in 930 CMR 1.00, except as otherwise required by the context, shall have the following meanings:

**Adjudicatory Hearing.** An evidentiary hearing held to resolve disputed factual issues in an Adjudicatory Proceeding.

**Adjudicatory Proceeding.** A proceeding before the Commission initiated pursuant to M.G.L. c. 268B, § 4(c) to determine whether there has been a violation of M.G.L. c. 268A or 268B.

**Authorized Representative.** An attorney or other person authorized by a Party to represent him or her in an Adjudicatory Proceeding.

**Commission.** The State Ethics Commission as established by M.G.L. c. 268B, § 2.

**Commissioner.** A duly appointed member of the State Ethics Commission.

**Documents.** All writings, drawings, graphs, charts, photographs, sound recordings, images, and other data and data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.

**E-filing.** Electronic document filing in accordance with the Commission's Electronic Case Filing [Administrative Procedures Manual \("ECF Manual"\)](#), which is posted on the Commission's website.

**Final Decision.** A decision by the Commission pursuant to 930 CMR 1.01(10)(o)3.

**Legal Advisor.** A member of the Commission's Legal Commission's websiteDivision assigned to assist the Presiding Officer in connection with an Adjudicatory Proceeding.

**Papers.** All written communications filed in an Adjudicatory Proceeding, including motions, pleadings, and other documents.

**Party.** The Petitioner and Respondent, as defined in 930 CMR 1.01(1)(c): **Petitioner** and **Respondent**, and such other Person(s) who as a matter of constitutional right or by any provision of the General Laws are entitled to participate fully in the Adjudicatory Proceeding.

**Person.** A business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons.

**Petitioner.** The State Ethics Commission's Enforcement Division.

**Presiding Officer.** The Commissioner duly designated by the Commission to conduct an Adjudicatory Proceeding.

**Respondent.** The person who is the subject of the Adjudicatory Proceeding and whose conduct is alleged to have violated M.G.L. c. 268A or 268B.

#### (2) Representation.

(a) **Appearance.** An individual may appear on his or her own behalf. A duly authorized officer or employee may represent a corporation, an authorized member may represent a partnership or joint venture, and an authorized trustee may represent a trust. Any Party in an Adjudicatory Proceeding shall have the right to be accompanied, represented and advised by an Authorized Representative.

(b) **Notice of Appearance.** An appearance shall be made in an Adjudicatory Proceeding by filing a written notice with the Commission. Such notice shall contain the name, mailing address and telephone number of the Authorized Representative. An Order to Show Cause, Answer, or other pleading containing such information shall be treated as a notice of appearance.

### (3) Time.

(a) **Timely Filing.** Papers required or permitted to be filed under 930 CMR 1.00, any Scheduling or other Order, or any provision of the applicable law, must be filed electronically in accordance with the [ECF Manual](#). A Respondent may seek permission from the Presiding Officer to file non-electronically. Filings that are not filed electronically shall be deemed filed and served upon receipt.

(b) **Notice of Commission Actions.** Notice of actions and other communications from the Commission shall be deemed received upon the date of issuance if issued electronically, or upon the day of hand delivery, or, if mailed, three days after deposit in the U.S. mail.

(c) **Computation of Time.** Unless otherwise specifically provided by law or 930 CMR 1.00, computation of any time period referred to in 930 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Commission's office is closed, in which event the period shall run until the end of the next following business day. When the time period is less than seven days, intervening days when the Commission's office is closed shall be excluded in the computation.

(d) **Extension and Shortening of Time.** It shall be within the discretion of the Commission or Presiding Officer, upon its or his or her own initiative or upon motion for good cause shown, to extend or to shorten any time limit contained in 930 CMR 1.00. All requests for such changes shall be made by motion before the expiration of the original or previously extended time period. The filing of such motion shall toll the time period sought to be extended or shortened until the Commission or Presiding Officer acts on the motion. 930 CMR 1.01(3)(d) shall not apply to any limitation of time prescribed by the General Laws of the Commonwealth.

### (4) Filings Generally.

(a) **Title.** Papers filed with the Commission shall state the docket number, if assigned, the title of the Adjudicatory Proceeding, and the name of the Person in whose behalf the filing is made.

(b) **Personal Privacy Protection.** Unless ordered otherwise by the Commission or the Presiding Officer, Parties shall refrain from filing with the Commission papers including any of the following, and shall redact papers as necessary to comply with 930 CMR 1.01(4)(b):

1. **Home Addresses.** Certificates of service shall indicate that service was made without identifying any home address at which service was made. If a home address is pertinent to a violation or defense, the Parties should bring the matter to the attention of the Presiding Officer. A Party appearing on his or her own behalf shall provide his or her home address to the Commission and to each other Party, but need not include such home address on filings, and said home address shall not be made public.

2. **Social Security Numbers.**

3. **Names of Minor Children.**

4. **Dates of Birth.**

5. **Financial Account Numbers.**

The responsibility for redacting this information rests solely with the Party making the filing. The Commission will not review each pleading for compliance with 930 CMR 1.01(4)(b).

(c) **Signatures.** Papers filed with the Commission shall be signed in accordance with the ECF Manual and shall state the work address and telephone number of the signing Party or Authorized Representative (if the Respondent is *pro se*, signature by an Authorized Representative is not required). This signature

constitutes a certification by the signer that he or she has read the document and knows the content thereof, and that such statements are true; that the document is not interposed for delay; and that, if the document has been signed by an Authorized Representative, he or she has full power and authority to do so. When permission has been granted to file non-electronically, a Party or Authorized Representative must sign each filing and by doing so makes the same representations.

**(d) Designation of Commission.** The Commission shall be designated by its name and not by the name(s) of particular individual(s) holding office, and if, while the Adjudicatory Proceeding is pending, a change occurs in an individual(s) holding office, the Adjudicatory Proceeding shall not abate, and no substitution of Parties shall be necessary.

**(e) Form:**

1. **Size.** All Papers shall be on paper 8½ inches wide by 11 inches long, with left-hand margins not less than 1½ inches wide and other margins not less than one inch.

2. **Commission Format.** The Commission may provide forms to be used by the Parties.

**(f) Copies.** No copies of Papers need be filed, except as provided in 930 CMR 1.01(10)(m) below with respect to briefs, and except in cases where a Respondent has been granted permission to file non-electronically. A Respondent granted such permission shall file the original of each required Paper together with two additional copies.

**(g) Service.**

1. **Orders to Show Cause.** Orders to Show Cause shall be filed electronically with the Commission and assigned a docket number by the Legal Division. Immediately thereafter, the Petitioner shall serve the Order to Show Cause on the Respondent and file a certificate of service. Service of the Order to Show Cause shall be by electronic mail unless no e-mail address is available for the Respondent, in which case service shall be by regular mail.

2. **Filing Subsequent to Orders to Show Cause.** All Papers filed with the Commission must be served upon all other Parties to the Adjudicatory Proceeding by electronic mail, unless the Respondent has obtained permission to file by non-electronic means, in which case service by and upon the Respondent shall be by delivery in hand, or by deposit in the United States mail, postage prepaid, properly addressed. All Papers filed with the Commission shall be accompanied by a certificate of service.

**(h) Compliance.** Failure to comply with the provisions of 930 CMR 1.01(4)(a) through (g) shall be grounds for refusal by the Commission to accept Papers for filing.

## **(5) Initiation of Adjudicatory Proceedings.**

**(a) Order to Show Cause.** An Adjudicatory Proceeding shall be initiated by the filing by the Petitioner of an Order to Show Cause setting forth the grounds for such action. An Order to Show Cause shall be deemed issued upon its filing and service in compliance with 930 CMR 1.01(4)(a) through (h). The Order to Show Cause shall contain a statement of the basis for the commencement of the Adjudicatory Proceeding and the source of authority to conduct such a Proceeding. The Order to Show Cause shall state expressly whether relief is sought pursuant to M.G.L. c. 268A, §§ 9, 15, or 21, and, if such relief is sought, the nature of such relief. Petitioner shall notify the Commission when an Order to Show Cause has common facts with a previously filed Order to Show Cause.

**(b) Scheduling Order.** A Scheduling Order establishing case deadlines shall be issued after the Order to Show Cause has been filed.

**(c) Answer.** Within 21 days of the issuance of an Order to Show Cause, the Respondent shall file an Answer containing a full, direct and specific answer to each claim set forth in the Order admitting, denying, or explaining material facts. If there is insufficient knowledge to answer with specificity, this shall be so stated and the response shall be treated as a general denial. The Answer shall contain all affirmative defenses which are relied upon and must cite any statute(s) and/or regulation(s) which form the basis of each defense. All allegations contained in the Order to Show Cause which are not specifically admitted in the Answer shall be deemed denied. All new matters contained in the Answer shall be treated as if denied.

**(d) Representation to the Commission.** By presenting to the Commission an Order to Show Cause or an Answer, a Party certifies that to the best of the Party's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that the claims, defenses, and other legal contentions are

warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; that the factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and that the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information. If, after notice and a reasonable opportunity to respond, the Commission or the Presiding Officer determines that 930 CMR 1.01(5)(d) has been violated, the Commission or the Presiding Officer may strike the unsupported matter and order such other relief as is warranted.

**(e) Pleadings.** The Commission or the Presiding Officer upon its, his, or her own initiative or upon the motion of any Party may, in its, his, or her discretion, order any Party to file an Answer or other pleading, or to reply to any pleading and further permit either Party to amend its pleadings upon conditions just to all Parties.

**(f) Duties of Presiding Officer.** A Presiding Officer may issue such nondispositive orders as are necessary for the fair and orderly administration of an Adjudicatory Proceeding and for the prompt resolution of matters.

## **(6) Motions.**

**(a) General Requirements.** A Party may request by motion any order or action not inconsistent with law or 930 CMR 1.00. The Presiding Officer shall rule on all motions except as provided in 930 CMR 1.01(6), and may deny a motion which would terminate an Adjudicatory Proceeding. However, only the Commission may terminate an Adjudicatory Proceeding. The Presiding Officer may, in his or her discretion, refer any motion to the Commission for decision. Motions must be made in accordance with the deadlines established by the Scheduling Order; untimely motions may be denied. Memoranda in support of and in opposition to motions shall not exceed 20 pages in length unless the prior permission of the Presiding Officer is obtained. Whether to grant a hearing on a motion is within the discretion of the Presiding Officer or the Commission.

**(b) Motion for More Definite Statement.** If a pleading to which a responsive pleading is required is so vague or ambiguous that a Party cannot reasonably frame a responsive pleading, the responding Party, within the time permitted for such responsive pleading, may move for a more definite statement before filing its responsive pleading. The motion shall set forth the defects complained of and the details desired. If the motion is granted, the more definite statement shall be filed within ten days of receipt of the order or within such other time as may be ordered. If the more definite statement is not filed within the prescribed deadline, the Commission or Presiding Officer may dismiss the Adjudicatory Proceeding, grant the relief sought, or make such other order as it or he or she deems appropriate.

### **(c) Motion to Dismiss.**

**1. General Grounds.** The Respondent may move to dismiss for failure of the Petitioner to prosecute or to comply with 930 CMR 1.00 or with any order of the Commission or Presiding Officer. Upon completion by the Petitioner of the presentation of evidence, the Respondent may move to dismiss on the grounds that, upon the facts and/or the law, the Petitioner has not sustained its case. Such a motion may be acted upon when it is made or at the close of all the evidence. A Presiding Officer may deny such a motion, but only the Commission may grant such a motion. The granting of such a motion shall be considered a Final Decision, and shall be made in writing as provided by 930 CMR 1.01(10)(o).

**2. Failure to Prosecute.** When the record discloses the failure of the Petitioner to file documents required by 930 CMR 1.00, to respond to notices or correspondence, or to comply with orders of the Commission or Presiding Officer, or otherwise indicates an intention by the Petitioner not to continue with the prosecution, the Commission or Presiding Officer may issue an order requiring that the Petitioner show cause why the case should not be dismissed for lack of prosecution. If the Petitioner shall fail to show such cause, the case may be dismissed with prejudice. Any such dismissal shall be granted only by the Commission, shall be a Final Decision, and shall be made in writing as provided by 930 CMR 1.01(10)(o).

**(d) Motion for Decision on the Pleadings.** Any Party may move for decision on the pleadings in accordance with the Scheduling Order. If matters outside the pleadings are presented, the motion shall be treated as one for Summary Decision.

### **(e) Motion for Summary Decision.**

**1.** Any Party may move, in accordance with the Scheduling Order, for Summary Decision in his or her favor, as to all or part of a matter. A motion for Summary Decision shall be supported by a statement of the facts that the moving party contends are undisputed, supported by citations to pleadings, affidavits,

discovery responses, or other evidentiary materials. A Party responding to a Motion for Summary Decision shall respond to the movant's statement of undisputed facts and shall indicate as to each fact whether it is undisputed, with citations to evidentiary materials. If the motion is granted as to part of the matter and further proceedings are necessary to decide the remaining issues, a hearing shall be held. A Presiding Officer may deny a Motion for Summary Decision, but only the Commission may grant such a motion. Where the Commission determines that the undisputed facts entitle a non-moving Party to Summary Decision, the Commission may grant Summary Decision in favor of the non-moving party.

2. When the record discloses the failure of the Respondent to file documents required by 930 CMR 1.00, to respond to notices or correspondence, or to comply with orders of the Commission or Presiding Officer, or otherwise indicates a substantial failure to cooperate with the Adjudicatory Proceeding, the Presiding Officer may issue an order requiring that the Respondent show cause why a Summary Decision should not be entered against him or her. If the Respondent fails to show such cause, a Summary Decision may be entered in favor of the Petitioner. Any such Summary Decision shall be granted only by the Commission, shall be a Final Decision, and shall be made in writing as provided in 930 CMR 1.01(10)(o).

**(f) Consolidation of Proceedings.** Any Presiding Officer, upon notice of motion by a Party or otherwise in his or her discretion, may consolidate multiple Adjudicatory Proceedings that involve common issues, common facts, or common Parties.

## **(7) Discovery.**

**(a) Generally.** Discovery shall commence promptly following the filing of an Answer and shall be conducted in accordance with the Scheduling Order. Failure to serve discovery requests or to file discovery motions in compliance with the Scheduling Order shall be grounds for their denial.

**(b) Requests for Documents.** Any Party to an Adjudicatory Proceeding may request any other Party to produce or make available for inspection, copying or photocopying, any documents or tangible things, not privileged, and not previously supplied, which are in the possession, custody, or control of the Party to whom the request is made and which are relevant to the proceeding. The request shall set forth the items requested by individual item or category with reasonable particularity. Such production shall be made at a time and place agreed upon by the Parties, or, absent such agreement, at the office of the Commission or such other place as the Commission shall designate.

**(c) Depositions.** A Party to an Adjudicatory Proceeding may take one deposition of a single witness of not more than four hours' duration, upon notice filed and served at least ten days before the date of the deposition. Further depositions shall be taken only pursuant to agreement of the Parties, or pursuant to approval by the Commission or Presiding Officer of a motion made as set in 930 CMR 1.01(7)(c)1. and (g). Depositions shall be taken at the Commission's office in Boston unless the Presiding Officer determines that this would create hardship for the deponent.

1. **Form and Content.** A motion to take a deposition must be filed and served at least ten days before the date of the proposed deposition. A motion requesting a deposition shall state the name of the witness to be deposed, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, and the reason why the testimony being sought is significant, not privileged and not discoverable by an alternative means, or the reason why the deposition is needed in order to preserve testimony. Whether or not to grant such a motion is within the sound discretion of the Commission or Presiding Officer. If the motion is allowed, the Presiding Officer shall give at least five days' notice of the deposition.

2. **Scope and Conduct of Deposition.** Every witness deposed shall be duly sworn. Adverse Party(ies) shall have the right to question the witness. Objections to questions shall be in short form, stating the ground of objection relied upon. The testimony shall be reduced to writing and, unless waived, shall be signed by the witness and certified by the stenographer. Subject to appropriate rulings on objections and the Parties' agreement regarding its use, the deposition shall be received in evidence as if the testimony contained therein had been given by the witness in the Adjudicatory Hearing.

3. **Recording by Other Than Stenographic Means.** The Presiding Officer may order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy.

**(d) Interrogatories.** A Party to an Adjudicatory Proceeding may obtain relevant information from another Party by serving written questions, known as interrogatories, upon any other Party. Interrogatories may be used for the purpose of discovering relevant, not privileged, information not previously supplied through voluntary discovery. No Party, without approval of the Commission or Presiding Officer, shall serve more than 25 interrogatories, including all discrete subparts. Each interrogatory shall be separately and fully answered under the penalties of perjury unless it is objected to, in which event, the reasons for the objection should be stated in *lieu* of an answer. Such answers shall be provided within the time required by the Scheduling Order.

**(e) Requests for Admissions.** Any Party to an Adjudicatory Proceeding may serve upon any other Party written requests for admission of the truth of any relevant matter, including but not limited to the genuineness of any documents attached to such requests, after commencement of the Adjudicatory Proceeding.

1. Each matter for which an admission is requested shall be separately set forth. The truth of the matter is admitted unless within 30 days the Party to whom the request is directed serves either:

- a. a written statement signed by the Party under penalties of perjury specifically denying the matter; or
- b. a written statement signed by the Party under penalties of perjury stating that the Party has made reasonable inquiry and the information known or readily obtainable by the Party is insufficient to enable the Party to admit or deny; or
- c. a written objection to the request, signed by the Party or the Party's Authorized Representative. When good faith requires that a Party qualify an answer or deny only a part of the matter for which an admission is requested, the Party shall specify so much of it as is true and qualify or deny the remainder.

2. Any matter admitted under this rule shall be treated as established unless the Presiding Officer upon motion permits withdrawal or amendment of the admission.

**(f) Objection/Protective Orders.** Any motion seeking relief from a discovery request shall be filed within the time permitted by the Scheduling Order. A hearing may be scheduled upon the motion but such a hearing shall not be mandatory. Protective orders may be issued upon motion or upon the Presiding Officer's own initiative to protect a Party from annoyance, embarrassment, oppression, undue burden or expense, or to protect confidential information or documents. Orders of the Commission or Presiding Officer may include limitations on the scope, method, time and place of discovery or provisions for protecting confidential information or documents.

**(g) Motion for Order Compelling Discovery.** Upon reasonable notice to other Parties, and within the time permitted by the Scheduling Order, a Party may file with the Commission a motion to compel discovery accompanied by a detailed statement of the reasons for such discovery request in the event that a request is not honored, or only partially honored, or interrogatories or questions at depositions are not completed/answered. Such motion shall also include a statement of the moving Party's good faith efforts to resolve the dispute.

## **(8) Intervention and Participation.**

Any person whose name is mentioned during an Adjudicatory Hearing of the Commission and who may be adversely affected thereby may file a written request to make an oral or written statement in opposition to such adverse mention. The Commission or the Presiding Officer shall, in their discretion, regulate the time, place and method of any oral statement offered pursuant to 930 CMR 1.01(8).

## **(9) Stipulations.**

The Parties may agree upon any pertinent facts and law in the Adjudicatory Proceeding by written stipulation filed in accordance with the Scheduling Order or by oral stipulation made at the hearing. Parties are encouraged to stipulate to facts not reasonably subject to dispute. In making its findings, the Commission is not bound by any stipulation which it finds to be factually or legally erroneous.

## **(10) Conferences and Adjudicatory Hearings.**

**(a) Conferences.** The Presiding Officer, upon his or her own initiative or upon the request of any Party, may call upon the Parties to appear for, or to make themselves available by telephone or other means for, a conference or conferences. Any agreements reached by the Parties at such a conference shall be set forth in an order. The scheduling of a conference shall be solely within the discretion of the Commission or Presiding Officer.

**(b) Adjudicatory Hearings, When and Where Held.** Adjudicatory Hearings will be held at the Commission's office in Boston unless the Presiding Officer determines that a hearing should be held at some other place. All Adjudicatory Hearings shall be public, unless, prior to an Adjudicatory Hearing, a Party moves to close the Adjudicatory Hearing, and the Commission grants the motion. The Party moving to close the Adjudicatory Hearing shall bear the burden to demonstrate by clear and compelling evidence that closure is necessary to protect important interests, that such interests outweigh the public's right of access to the Adjudicatory Hearing, and that no alternative to closure is available. Any order of closure shall be supported by written findings. Commission deliberations following the conclusion of an Adjudicatory Hearing shall be conducted in executive session, and shall be closed to the public.

All Adjudicatory Hearings shall be scheduled for a date within 90 days of the issuance of the Order to Show Cause, except as provided in 930 CMR 1.01(10)(b). The scheduling of the Adjudicatory Hearing within this 90 day period shall be solely within the discretion of the Commission or the Presiding Officer. The Presiding Officer in his or her discretion or for good cause shown may schedule an Adjudicatory Hearing beyond the 90 day period, continue a previously scheduled Adjudicatory Hearing, or advance a case for Adjudicatory Hearing. In the event of the unexcused absence of a Party from an Adjudicatory Hearing, the Commission may enter a default judgment against that Party, which default judgment shall constitute a Final Decision pursuant to 930 CMR 1.01(10)(o) unless vacated by the Commission upon motion of the defaulting Party filed within 14 days of the entrance of the default judgment.

### **(c) Pre-hearing Requirements Concerning Admissibility of Exhibits and Testimony.**

1. Parties must file and serve upon each other the following not less than 21 days prior to the Adjudicatory Hearing:
  - a. a witness list including the name of each witness;
  - b. an expert witness list, if applicable, including the name, professional address, qualifications and subject matter of the testimony of each expert witness expected to be called, and, for each expert, a report setting forth the opinions to which the expert is expected to testify and the basis therefor;
  - c. an exhibit list;
  - d. stipulations of law and fact if any;
  - e. any proposed excerpts from an opposing Party's statements and interviews that will be offered as evidence; and
  - f. designations and counter-designations from interviews and depositions.
2. Not later than ten days before the Adjudicatory Hearing, the Parties shall exchange written objections, if any, to each other's proposed exhibits, expert testimony, and opposing Party excerpts, and, with respect to such excerpts, where the objection is lack of completeness, shall indicate in writing what additional language is deemed necessary to complete the excerpt. Not later than seven days before the Adjudicatory Hearing, the Parties shall meet to discuss evidentiary issues. The Parties shall discuss their exhibit lists and objections with the goal of resolving evidentiary disputes between themselves if possible. The Parties are encouraged to stipulate to the admissibility of exhibits and testimony as to which there is no objection. To the extent that the Parties cannot agree, either or both Parties may request a conference by telephone or otherwise with the Presiding Officer to resolve those issues before the Adjudicatory Hearing. Prior to such a conference, each Party shall submit a brief outline of the issues to be resolved.
3. The Parties shall prepare two sets of binders containing all stipulated exhibits for use at the Adjudicatory Hearing by the Presiding Officer and the witnesses. These binders shall be provided to the Legal Advisor at least two days before the Adjudicatory Hearing.

4. It shall be grounds for objection to any exhibit and any expert testimony offered at an Adjudicatory Hearing that notice to the opposing Party was not given in compliance with 930 CMR 1.01(10)(c).

5. Any exhibit and any expert testimony of which the opposing Party has been given notice in compliance with 930 CMR 1.01(10)(c) and to which no objection has been raised is presumptively admissible absent good cause shown for the lack of objection.

**(d) Conduct at Adjudicatory Hearings.** The Presiding Officer shall conduct the Adjudicatory Hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and administer an oath or affirmation to all witnesses. The Presiding Officer may, if appropriate or necessary, exclude any person, including an Authorized Representative, from an Adjudicatory Hearing for contemptuous conduct. An Authorized Representative who engages in contemptuous conduct during an Adjudicatory Hearing may be suspended or excluded from further practice before the Commission based upon written findings made by the Commission or Presiding Officer.

**(e) Order of Proceedings.** It shall be the usual practice for the Petitioner to present the first opening statement, to present its evidence before the Respondent, and to present the last closing argument, but the Presiding Officer may in his or her discretion vary the order of presentation.

**(f) Presentation of Proof.** All Parties shall have the right to be represented by counsel or other Authorized Representative, call and examine witnesses, introduce exhibits, cross-examine witnesses who testify, submit evidence, make objections, bring motions, make oral arguments, and make brief closing arguments. The scheduling of witnesses and of cross-examination, including whether to grant any Party's application to permit a witness to testify via tele-conferencing or other electronic means, and whether to permit redirect and recross, will be decided by the Presiding Officer in his or her discretion. The Parties may advocate in their closing arguments concerning the sanction(s) which should be imposed by the Commission in the event that it makes a determination that a violation has occurred. The Commission may, upon motion of a Party or upon the advice of the Presiding Officer, grant the Parties an opportunity to make such closing arguments before the Commission. The Presiding Officer or Commission, as the case may be, may limit the time of closing arguments.

**(g) Witnesses and Evidence.**

1. **Witnesses.** All testimony shall be under oath or affirmation, and the Presiding Officer shall administer oaths. A Party calling a witness shall provide the witness with a copy of 930 CMR 1.00 prior to the Adjudicatory Hearing. A copy of 930 CMR 1.00 shall also be available at any Adjudicatory Hearing.

2. **Evidence.** Relevant evidence may be admitted if, in the judgment of the Presiding Officer, it is reliable, even if it would be inadmissible under the laws of the Commonwealth or other jurisdictions. Parties may present evidence at the hearing relevant to the sanctions to be imposed by the Commission in the event it makes a determination that a violation has occurred.

3. **Offer of Proof.** When evidence is excluded by the Presiding Officer, a party may make an offer of proof so that the record reflects what was excluded. An offer of proof shall state the substance of such proof, and, if the excluded proof is documentary, a copy of such evidence shall be marked for identification.

**(h) Evidence Included.** All evidence, including any records, investigative reports, documents, and stipulations, which is to be relied upon in making a Final Decision, must be offered and made a part of the record. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference of any matter previously filed during the Adjudicatory Proceeding. At the close of the hearing, all exhibits shall remain in the custody of the Presiding Officer or his or her designee.

**(i) Administrative Notice.** The Commission or Presiding Officer may find a fact without either Party submitting proof if the fact is not subject to reasonable dispute, either because it is generally known, or because it is readily ascertainable from reliable sources. The Parties must be notified of the material to be so noticed and given an opportunity to object and offer contrary evidence.

**(j) Authentication.** An official record kept within the Commonwealth, or an entry therein, when admissible for any purpose, may be proved by an official publication thereof, by a copy authenticated as true and accurate by the officer having legal custody of the record or the custodian's deputy, or by any other means of authentication recognized under the laws of the Commonwealth.

**(k) Subpoenas.** In conducting an Adjudicatory Proceeding, the Presiding Officer may issue, vacate, modify and enforce subpoenas requiring the attendance and testimony of witnesses and/or the production of documents or other evidence in accordance with the following provisions:

1. **Issuance.** An attorney representing a Party may issue a subpoena in the name of the Commission. A Party not represented by counsel may make written application to the Presiding Officer to issue a subpoena in the name of the Commission. However issued, every subpoena shall show on its face the name and address of the requesting Party. Notice to any Party shall not be required for issuance of a subpoena. The Commission may prescribe the form of subpoena but, insofar as practicable, such form shall adhere to the form used in civil cases before the courts.

2. **Motion to Vacate or Modify.** Any Person to whom a subpoena is directed may file a written motion to vacate or modify the subpoena. The Commission or Presiding Officer shall give prompt notice to the Party who issued or requested issuance of the subpoena. The Commission or Presiding Officer may grant such petition in whole or in part upon a finding that the testimony or the evidence requested is not probative of any fact in question, or upon a finding that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested.

3. **Costs.** Witnesses shall be paid the same fees for attendance and travel by the Party issuing the subpoena as in civil cases before the courts.

**(l) Transcript of Adjudicatory Hearing: Correction and Transmission to Commission.**

1. **Recording and Transcripts.** The Adjudicatory Hearing shall be recorded. The Parties shall be notified by the Legal Advisor when the transcript has been prepared. The Respondent may arrange to obtain a transcript from the stenographer at his or her own expense.

2. **Correction of Transcript.** Within seven days after having received notice from the Legal Advisor that the transcript has been prepared, a Party may submit proposed corrections to the Presiding Officer. A copy of such proposed corrections shall be served on the opposing Party, who shall have three days from date of service to make any objections. The Presiding Officer shall thereupon rule on such proposals and may make corrections on his or her own initiative. Corrections may be made only to make the transcript conform to the evidence presented at the Adjudicatory Hearing. Once any such corrections are made, or the time for proposing such corrections has elapsed, the Presiding Officer shall forward the transcript to the Commission.

**(m) Briefs.** The Parties may submit briefs at or after the close of the Adjudicatory Hearing upon terms fixed by the Presiding Officer. Such briefs shall not exceed 20 pages in length unless the prior permission of the Presiding Officer is obtained. Six copies of each brief shall be filed with the Commission unless the Presiding Officer shall direct a lesser number. A copy shall be served upon the opposing Party, its Authorized Representative, or counsel if represented.

**(n) Settling the Record.**

1. **Contents of Record.** The record of the Adjudicatory Hearing may consist of the following items: pleadings, conference memoranda, magnetic tapes, orders, briefs and memoranda, answers to interrogatories and requests for admissions, depositions, transcripts, exhibits, and other papers or documents which the Presiding Officer has specifically designated be made a part of the record. The record shall be available for inspection by the Parties.

2. **Evidence After Completion.** No evidence shall be admitted after completion of an Adjudicatory Hearing or after a case has been submitted on the record, unless otherwise ordered by the Presiding Officer upon a showing of good cause.

3. **Weight of Evidence.** The weight to be attached to any evidence in the record, including evidence concerning the credibility of witnesses, rests within the sound discretion of the Commission. The Commission or Presiding Officer may in any case require either Party, with appropriate notice to the other Party, to submit additional evidence on any matter relevant to the Adjudicatory Proceeding.

4. **Exceptions.** Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a Party, at the time that a ruling is made or sought, makes known its objection to such action and its grounds therefor, provided that, if a Party has no opportunity to object to a ruling at the time it is made, or to

request a particular ruling at an appropriate time, such Party, within three days of notification of action taken or refused, shall state its objection and grounds therefor.

**(o) Decisions.**

**1. Timing.** Unless the Parties otherwise dispose of the matter by agreement, within 30 days of the end of the Adjudicatory Hearing, the Commission shall meet in executive session for the purpose of reviewing and beginning deliberations on the evidence before it. The "end of the Adjudicatory Hearing" shall mean the date of the conclusion of the hearing, the date on which closing arguments are made before the Commission, the date on which all Parties' briefs have been received by the Commission, or the date on which the transcript is transmitted to the Commission pursuant to 930 CMR 1.01(10)(l)2., whichever occurs last.

**2. Burden of Proof.** The Petitioner must prove its case by a preponderance of the evidence.

**3. Final Decisions.** All Final Decisions shall be made by a minimum of three votes of the Commission. Every Final Decision shall be in writing and shall be signed by the participating Commissioners. Commissioners may authorize Commission staff to stamp their signatures on Final Decisions. With respect to the determination of violations, every Final Decision shall contain a statement of reasons therefor, including a determination of every issue of fact or law necessary to the Final Decision. Every Final Decision shall be published within 30 days after completion of the Commission's deliberations. Any sanction to be imposed pursuant to the finding of a violation herein shall be incorporated in the Final Decision regarding that violation. The Commission's Final Decision shall include all findings required for remedies available pursuant to M.G.L. c. 268A, §§ 9, 15, or 21.

**4. Disposition Agreements.** The facts set forth in a Disposition Agreement which includes remedies available pursuant to M.G.L. c. 268A, §§ 9, 15, or 21 shall constitute the findings pursuant to an Adjudicatory Proceeding required by M.G.L. c. 268A, §§ 9, 15, or 21.

**(p) Reopening of Hearings.** At any time before a Final Decision is issued, on the motion of any Party or on their own initiative, the Commission or the Presiding Officer may request that the hearing be reopened for the purpose of receiving new evidence.

**(q) Motion for Reconsideration.** Any Party may file a Motion for Reconsideration, setting forth specifically the grounds or statutory provision relied upon to sustain the Motion, within ten days from the date when the Commission issued the Final Decision. Facts newly raised in such a motion must be supported by affidavit.

**(r) Judicial Appeal.** Within 30 days after the issuance of a Final Decision, the Respondent may file a petition for review of that Decision in Superior Court. The filing of a petition for review shall not operate as a stay of enforcement of the Commission's Decision, but the Commission may in its discretion stay enforcement.

**(s) Return of Exhibits.** Upon motion after a Final Decision has become final and all appeal periods have lapsed, the Commission or Presiding Officer, in the exercise of discretion, may permit the return of original exhibits or any part thereof to the Party or Person entitled thereto. If exhibits are returned to a Party pursuant to 930 CMR 1.01(10)(s), the Commission shall retain copies.

## **1.02: Miscellaneous Provisions Applicable to All Adjudicatory Proceedings**

### **(1) General.**

930 CMR 1.02 shall be applicable to all proceedings held under 930 CMR 1.01.

### **(2) Availability of 930 CMR 1.00.**

Copies of 930 CMR 1.00 shall be posted on the Commission's website, [www.mass.gov/ethics](http://www.mass.gov/ethics), and available from the Commission upon request by any person.

### **(3) Severability.**

If any rule contained in 930 CMR 1.00 is found to be unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining rules will not be so affected.

### **(4) Non-English Speaking Parties and Witnesses.**

If any Party in an Adjudicatory Proceeding has a concern about the ability of a Party or a witness to communicate effectively in English, the concern should be raised with the Presiding Officer at the earliest convenient time so that arrangements for an interpreter may be made.

### **(5) Conflicts.**

No Presiding Officer who has a direct or indirect interest, personal involvement, or bias in an Adjudicatory Proceeding, shall conduct a hearing in said matter, nor shall he or she participate in the decision-making process with respect to such matter.

### **(6) Ex-parte Communications by Parties Prohibited.**

No Party or Authorized Representative of a Party to an Adjudicatory Proceeding shall make any written or oral submission to the Presiding Officer and his or her Legal Advisor unless such submission is copied to, or made in the presence of, all Parties. An oral request for information on scheduling or the availability of a ruling does not violate 930 CMR 1.02(6).

### **(7) Docket/Decision Index.**

**(a) Docket.** Unless otherwise proscribed by law, the Commission shall maintain on a current basis, a docket of all proceedings which shall list separately in chronological order all Papers filed and actions taken in each Adjudicatory Proceeding.

**(b) Decision Index.** Unless otherwise proscribed by law, the Commission shall maintain on a current basis, a Final Decision index and compilation of Final Decisions. Said index shall contain an alphabetical listing by name and subject matter of all Final Decisions rendered and shall contain a further cross-reference as to the page number in the compilation where the subject Final Decision may be found.

**(c) Public Inspection.** Except to the extent proscribed by law, the docket, Final Decision index, and compilation of Final Decisions shall be available for inspection and copying by the public during the office hours of the Commission. The rate for copying shall be rates as set by the Executive Office for Administration and Finance.

### **(8) Statute of Limitations.**

(a) Effective September 29, 2009, the statute of limitations governing Commission enforcement proceedings is five years from the date the Commission learns of the alleged violation, but not more than six years from the date of the last conduct relating to the alleged violation, as set forth in M.G.L. c. 268B, § 4(c).

(b) The statute of limitations set forth in M.G.L. c. 268B, § 4(c) applies to the following:

1. all Commission enforcement proceedings involving conduct that occurred on or after September 29, 2009; and
2. all Commission enforcement proceedings pending on September 29, 2009, in which, as of that date, an Order to Show Cause had not yet been filed.

(c) Commission enforcement proceedings pending on September 29, 2009 in which an Order to Show Cause had been filed as of that date are subject to the statute of limitations set forth in the former 930 CMR 1.02(10), which is available on the Commission's website, [www.mass.gov/ethics](http://www.mass.gov/ethics).

(d) The statute of limitations set forth in M.G.L. c. 268B, § 4(c) does not revive any cause of action that was time-barred under the former 930 CMR 1.02(10) as of September 29, 2009.

(e) For purposes of M.G.L. c. 268B, § 4(c), the Commission "learns of the alleged violation" only when the Commission's Executive Director, Enforcement Division Chief or Deputy Chief, or an attorney or investigator of the Enforcement Division, has actual knowledge that an alleged violation has occurred, or a complaint alleging a violation of M.G.L. c. 268A or c. 268B has been received at the Commission's office, subject to the following exception. The Commission does not "learn of the violation" when its Executive Director, General Counsel, and/or Legal Division attorneys and staff obtain information in the context of giving advice on behalf of the Commission concerning M.G.L. c. 268A or c. 268B.

### **1.03: Advisory Opinions to Municipal Employees**

(1) Upon written request by any municipal employee, including an employee of a municipal district, a regional municipal entity, a former municipal employee or a prospective municipal employee, the Commission shall issue a formal advisory opinion under M.G.L. c. 268B, § 3(g). Copies of any such opinions, excepting the name of the requesting person and any other identifying information, shall be forwarded to any city corporation counsel, city solicitor or town counsel who has subscribed with the Commission to receive the opinions. The Commission may decline to issue an opinion if the employee has requested an opinion on the same matter from the city corporation counsel, city solicitor or town counsel and a copy of the opinion has been filed with the Commission as provided in 930 CMR 1.03(3).

(2) An advisory opinion issued by the Commission under M.G.L. c. 268B, § 3(g) is binding on the Commission in any subsequent proceedings only with respect to the person who requested the opinion and to those upon whose behalf he requested the opinion. The Commission is not bound by an opinion whose material facts were omitted or misstated by the person in the request for the opinion, or who otherwise acted in bad faith in securing the opinion.

(3) Any city corporation counsel, city solicitor or town counsel who files with his respective municipal clerk an advisory opinion issued under M.G.L. c. 268A, § 22 shall also file a copy of the opinion with the Commission. Following receipt of the opinion, the Commission, acting through the Executive Director, shall notify the city corporation counsel, city solicitor or town counsel of any legal conclusions in the opinion which are inconsistent with Commission conclusions on similar issues under M.G.L. c. 268A or are otherwise, in the Commission's judgment, incorrect, incomplete or misleading. If no such notification is sent by the Commission within 30 days of receipt of the opinion, the opinion will be binding upon the Commission to the extent and in the manner stated in 930 CMR 1.03(2). An advisory opinion issued by a corporation counsel, city solicitor or town counsel under M.G.L. c. 268A, § 22, a copy of which is not filed with the Commission, is not binding upon the Commission.

#### *REGULATORY AUTHORITY*

*930 CMR 1.00: M.G.L. c. 268B, § 3(a).*

## **930 CMR 2.00: DESIGNATIONS OF PUBLIC EMPLOYEES**

### **Section**

**[2.01: Scope and Purpose](#)**

**[2.02: Definitions](#)**

**[2.03: Submission of Annual Designation Lists](#)**

**[2.04: Amendments to Lists](#)**

**[2.05: Identification of New Public Employees](#)**

## 2.06: Designations by the Executive Director and Appeals Therefrom

### **2.01 Scope and Purpose**

M.G.L. c. 268B requires that public employees annually file Statements of Financial Interest with the State Ethics Commission for any year in which they are public employees for 30 days or more. M.G.L. c. 268B defines "public employee" to include, with certain enumerated exceptions, persons holding "major policy making positions" in governmental bodies and imposes upon certain state and county officials the obligation annually to designate the "major policy making positions" within their respective jurisdictions. M.G.L. c. 268B also empowers the Executive Director of the State Ethics Commission to add positions which he deems to be "major policy making positions".

930 CMR 2.00 establishes standards and procedures for the designation of "major policy making positions" and identification of public employees by the appropriate state and county officials and by the Executive Director of the State Ethics Commission. They are intended to carry out the purposes of M.G.L. c. 268B by insuring uniform designations throughout state and county government and facilitating the designation process.

### **2.02 Definitions**

As used in 930 CMR 2.00, the following terms have the following meanings. All terms defined herein will be capitalized throughout 930 CMR 2.00.

**Board, Commission or Council Which has no Authority to expend Public Funds** means any board, commission or council which:

- (a) does not receive a periodic appropriation from the Commonwealth, and
- (b) has no express statutory authority to expend public funds, to hire employees, or to enter into contracts involving the expenditure of public funds; and
- (c) has no statutory duties which necessarily entail the expenditure of public funds unless provision is made by statute for payment thereof from a source other than the board, commission, or council itself.

**Commonwealth** means the Commonwealth of Massachusetts or any agency or political subdivision thereof.

**Designation List** means one of the lists of Major Policy Making Positions which must be filed with the State Ethics Commission pursuant to M.G.L. c. 268B, § 3(j).

**Designator** means a state or county official required by M.G.L. c. 268B, § 3(j) to submit a list of Major Policy Making Positions within his or her jurisdiction.

**Executive Director** means the Executive Director of the State Ethics Commission.

**Executive or Administrative Head or Heads of a Governmental Body** means:

- (a) the chief executive or administrative officer or officers of a Governmental Body; and
- (b) all members of any board, commission, authority or council which is a Governmental Body and the Executive Director thereof.

**Exercising Similar Authority** means exercising authority on more than an occasional basis or for more than eight consecutive days which is qualitatively or quantitatively similar to, or the same as, that of the Executive or Administrative Head or Heads of a Governmental Body, a Member of the Judiciary, a person whose Salary Equals or Exceeds that of a State Employee Classified in Step One of Job Group XXV of the general salary schedule contained in M.G.L. c. 30, § 46 and who reports directly to said Executive or Administrative Head, or the Head of a division, bureau or other Major Administrative Unit Within a Governmental Body, except that no person shall be deemed to be exercising authority similar to that of another person merely by virtue of acting in the place of that other person during his or her normal vacation or sick leave periods.

**Governmental Body** means: any state or county agency, authority, board, bureau, commission, council, department, division, or other entity, including the general court and the courts of the Commonwealth, whether or not located within, or subject to the control of, a larger Governmental Body.

**Head** means the chief executive or administrative officer or officers.

**Holding a Major Policy Making Position in a Governmental Body for 30 Days or More** means occupying that position for that period of time, without regard to days of actual service.

**Major Administrative Unit** means any department, division, bureau, or other unit whether established by law or by administrative action and whether or not within another administrative unit, which

(a) has, as its Head, a person whose Salary Equals or Exceeds that of a State Employee Classified in Job Group XXV and

(b) has primary responsibility for

1. matters arising within a particular geographic region; or
2. contracting or procurement; or
3. administering, awarding or monitoring grants, benefits or subsidies; or
4. inspecting, licensing, regulating, or auditing any person or entity; or
5. interpreting or enforcing laws, rules or regulations; or
6. matters involving substantial responsibility requiring the exercise of independent judgment.

**Major Policy Making Position(s)** means:

(a) The Executive or Administrative Head or Heads of a Governmental Body;

(b) all Members of the Judiciary;

(c) any person whose salary equals or exceeds that of a State Employee classified in Step One of Job Group XXV of the general salary schedule contained in M.G.L. c. 30, § 46 and who reports directly to said Executive or Administrative Head, except a person whose duties consist primarily of administrative tasks such as scheduling, record keeping, document handling, word processing and typing, and similar tasks;

(d) the Head of each division, bureau or other Major Administrative Unit within such Governmental Body; and

(e) persons exercising similar authority.

**Members(s) of the Judiciary** means every judge, justice, chief justice, chief judge, administrative justice, circuit justice, associate justice, associate judge, special justice, and master in chancery of every court of the Commonwealth.

**Person who Receives no Compensation** means any person who does not receive money or anything of value, except reasonable reimbursements for expenses actually incurred, in exchange for services rendered in a governmental position. Any person who serves in a position for which compensation is authorized by statute, rule, or regulation, shall be considered "a person who receives no compensation" within the meaning of this paragraph only if, by official act (including lack of an appropriation), the compensation is not made available to that person. Any person who fails for any reason to accept compensation which has been set aside for, or which has otherwise been made available to, him or her for their position, shall not be considered "a person who receives no compensation" within the meaning of 930 CMR 2.02.

**Public Employee** means any person Holding a Major Policy Making Position in a Governmental Body for 30 Days or More during a Reporting Year whether by election, appointment, contract of hire or engagement, and whether on a full, part-time, intermittent, or consultant basis, excluding any person who serves on a Board, Commission or Council Which Has No Authority To Expend Public Funds other than to approve reimbursements for expenses and excluding any Person Who Receives No Compensation other than reimbursements for expenses.

**Reporting Year** means the calendar year for which a Statement of Financial Interest is required to be filed.

**Salary Equals or Exceeds that of a State Employee Classified in Step One of Job Group XXV** means that the salary, wages or other compensation authorized for the reporting year equals or exceeds the salary in effect on January 1st of the Reporting Year for step one of job group XXV; provided that in the case of individuals working as consultants for a period which exceeds or is reasonably expected to exceed 60 days, it means that the figure arrived at by annualizing the maximum possible earnings equals or exceeds the salary in effect on January 1 of the reporting year for step one of job group XXV. For purposes of 930 CMR 2.02, a day means a full working day or part thereof.

## **2.03 Submission of Annual Designation Lists**

### **(1) Requests for Lists.**

On or before February 1 of each year, the Executive Director shall request every designator to prepare and submit a Designation List of the Major Policy Making Positions within his or her jurisdiction and to identify all public employees who are or have been in those positions during the Reporting Year.

### **(2) Submission of Lists**

(a) The designator shall submit the designation list to the State Ethics Commission within 60 days of receiving the request therefor from the Executive Director on forms provided by the Executive Director.

(b) The Designator shall prepare and submit a separate Designation List for each Governmental Body within his or her jurisdiction, identifying therein the positions, names and mailing addresses of all Public Employees within that Governmental Body. If more than one individual held a particular Major Policy Making Position during the Reporting Year, names and mailing addresses shall be provided for each such individual.

(c) The Designator shall attach to each Designation List an organizational chart for the Governmental Body to which that list corresponds.

### **(3) Certifications.**

The Designator shall certify on each Designation List that the list has been prepared in accordance with M.G.L. c. 268B and 930 CMR 2.00 and notice served as required by 930 CMR 2.03(4).

#### **(4) Notice.**

The Designator shall, before submitting any designation list to the Ethics Commission, notify each individual named on that list of his or her designation as a Public Employee and obligation to file a Statement of Financial Interest with the Ethics Commission on or before May 1.

#### **2.04 Amendment of Lists**

(1) A Designator may at any time add positions and/or individuals to his/her Designation List by submitting to the Ethics Commission a written amendment to the original Designation List, providing with respect to the new positions and individuals the same information and certifications as are required by 930 CMR 2.03(3) and (4) on the original Designation List.

(2) A Designator may delete positions and/or individuals from his/her Designation List during the 60-day period immediately following receipt of the Executive Director's request for designations by informing the Ethics Commission of the deletion in writing.

(3) A Designator may delete positions and/or individuals from his/her Designation List after the 60-day period immediately following receipt of the Executive Director's request for designations by submitting the following data in writing to the Commission:

- (a) A statement of reasons for the deletion;
- (b) Certification that any position to be deleted is not a Major Policy Making Position and that any individual to be deleted is not a Public Employee;
- (c) The salary authorized for any position or individual to be deleted;
- (d) An organizational chart reflecting the placement within the Governmental Body of any position or individual to be deleted; and
- (e) An official job description of any position to be deleted.

#### **2.05 Identification of New Public Employees**

Every Designator shall submit to the Ethics Commission the name of any new Public Employee within his or her jurisdiction within ten days of his or her employment.

#### **2.06 Designations by the Executive Director and Appeals Therefrom**

(1) The Executive Director may at any time add to any Designation List submitted in accordance with 930 CMR 2.03 any position which he or she deems to be a Major Policy Making Position and/or the names of any individuals whom he or she deems to be Public Employees, provided he/she certifies in writing that the addition is in accordance with M.G.L. c. 268B and with these regulations and that he/she has served notice as required by 930 CMR 2.06(2).

(2) The Executive Director shall, within 30 days of adding any individual to a Designation List, send written notice to the individual of his or her designation and obligation to file a Statement of Financial Interest with the State Ethics Commission, stating the facts relied upon as the basis for the designation, citing the statute and regulations authorizing designations by the Executive Director, enclosing a copy of the forms to be filed, and informing the individual of his/her right to an appeal before the Ethics Commission. The Executive Director shall also send a copy of the notice of the designation to the Designator and the head of the individual's Governmental Body.

(3) Any person aggrieved by the action of the Executive Director may appeal that action to the Ethics Commission in accordance with the Formal Rules of the Standard Rules of Practice and Procedure, 801 CMR 1.00.

*REGULATORY AUTHORITY*

*930 CMR 2.00: M.G.L. 268B, § 3*

## **930 CMR 3.00: CONFIDENTIALITY**

### **Section**

#### **3.01: Confidentiality of Commission Proceedings**

(1) 930 CMR 3.00 is made pursuant to the authority of M.G.L. c. 268B, § 3(a) and is intended to implement the confidentiality requirements of M.G.L. c. 268B, §§ 3(g), 4(a), (b), and (i), and (7).

(2) The nature or existence of a preliminary inquiry involving allegations of violations of M.G.L. c. 268A or 268B, or of an initial staff review to determine whether to conduct a preliminary inquiry, shall be kept confidential by members and employees of the Commission.

(3) Complainants and witnesses who contact, or who have been contacted by, an employee of the Commission, may be requested to keep confidential the nature or existence of a preliminary inquiry involving allegations of violations of M.G.L. c. 268A or 268B, or of an initial staff review to determine whether to conduct a preliminary inquiry, but are not required to comply with such a request.

(4) If the Commission votes and makes public a finding of reasonable cause and authorization of adjudicatory proceedings in accordance with M.G.L. c. 268B, § 4(c), the participants in the Commission proceeding shall no longer be bound by the requirements of 930 CMR 3.01(2) and (3).

(5) The identity of a complainant shall be kept confidential by Commission members and employees.

(6) Notwithstanding the provisions of 930 CMR 3.00, the Commission may provide relevant information concerning a complaint or inquiry to a court or a law enforcement agency. The Commission will inform a complainant when a matter is concluded, and may in its discretion provide information regarding the disposition of a complaint to the complainant, subject to the confidentiality requirements of M.G.L. c. 268B, § 3(g).

(7) Nothing contained in 930 CMR 3.00 shall be construed to require the subject of a preliminary inquiry or initial staff review to maintain the confidentiality of such proceedings, provided, however, that should the subject make a public disclosure concerning the disposition of an inquiry or staff review by the Commission, the Commission may confirm the existence of the inquiry or staff review and, in its discretion, make public any documents which were issued to the subject or which stated the resolution of the matter.

(8) Legal advice given by the Commission's Executive Director, General Counsel, and Legal Division and advisory opinions issued pursuant to M.G.L. c. 268B, § 3(g), shall be confidential, regardless of whether such advice or opinion is written, oral, or electronic, except that:

- (a) the Commission may publish advisory opinions, but shall redact the name of the requesting person and any other identifying information unless the requesting person consents to the use of his or her name;
  - (b) the requesting person may waive confidentiality and disclose advice he or she received;
  - (c) in the event that the recipient of a Commission advisory opinion or informal staff letter or email materially misrepresents the contents of such opinion or letter or email to any person, the Commission may disclose the request and any documents submitted by the requestor, and such opinion or letter or email; and
  - (d) if an advisory opinion, informal staff letter or email, or private enforcement letter is issued to a person who is subsequently the subject of a preliminary inquiry concerning the same or similar matters, and the Commission votes to find reasonable cause and authorizes adjudicatory proceedings, the opinion or letter or email may be disclosed and used as evidence.
- (9) Memoranda prepared by the Legal Division for the Commission during deliberations in executive sessions mandated by M.G.L. c. 268B, § 4(i) shall remain confidential.
- (10) Complaints that Commission members or employees have violated the provisions of M.G.L. c. 268B, §§ 3, 4, or 7 or 930 CMR 3.00 shall be referred to the Attorney General for investigation. Such referral shall not preclude additional sanctions by the Commission.

*REGULATORY AUTHORITY*

930 CMR 3.00: M.G.L. c. 268B, § 3(a).

## **930 CMR 4.00: STATEMENTS OF FINANCIAL INTERESTS: INSPECTIONS**

### ***Section***

#### **4.01: Public Inspection Request and Notification Procedures**

- (1) 930 CMR 4.00 is intended to implement the public inspection request and notification requirements contained in M.G.L. c. 268B, § 3(d).
- (2) For the purposes of 930 CMR 4.00:
- (a) **statement** means any statement of financial interests filed with the Commission pursuant to M.G.L. c. 268B, § 5;
  - (b) **filer** means any reporting person as defined in M.G.L. c. 268B, § 1(r);
  - (c) **requester** means any person who seeks to inspect or retain a copy of a statement submitted by a filer;
  - (d) **Commission** means the State Ethics Commission, acting through its members or employees.
- (3) A requester shall submit to the Commission a statement inspection request form containing:
- (a) the name of the filer;
  - (b) the statement year(s) to be inspected;

- (c) the name and address of the requester;
- (d) the person or organization, if any, on whose behalf the request is being made;
- (e) the signature of the requester; and
- (f) the date of the request.

(4) If the request is made in person at the Commission's office, the requester shall provide sufficient documentation identifying the requester. Sufficient documentation constitutes a driver's license, registry of motor vehicles identification card, student identification, social security card or passport. Following the Commission's determination that the document is sufficient and the statement inspection request form is complete, the Commission shall provide to the requester the statement for review. Any requester who wishes to retain a copy of a statement shall receive a copy following submission to the Commission of a payment sufficient to cover the reasonable copying costs, as determined by the Commission.

(5) If the request is received from a requester by mail, rather than in person, and the requester requests the Commission to forward by mail a copy of the statement, the request must be accompanied by:

- (a) a completed statement inspection request form;
- (b) a copy of documentation of identification containing the signature of the requester;
- (c) a bank check sufficient to cover the reasonable copying and mailing costs, as determined by the Commission. Upon determination of the completeness and sufficiency of the request, the Commission shall submit to the requester by mail a copy of the requested statement or statements.

#### REGULATORY AUTHORITY

930 CMR 4.00: M.G.L. c. 268B, § 3(d).

## 930 CMR 5.00: EXEMPTIONS FROM M.G.L. c. 268A AND M.G.L. c. 268B RELATED TO GIFTS

[See Alphabetical Index to Exemptions Related to Gifts to Public Employees](#)

### Section

**5.01: Statutory Prohibitions Concerning Gifts to Public Employees**

**5.02: No Exemption for Bribery, Corrupt Gifts, or Gifts Given with  
Fraudulent Intent**

**5.03: Statutory Authority to Promulgate Exemptions; Effect of  
Compliance with Regulation; No Inferences to be Drawn as to  
Conduct Not Specifically Exempted**

**5.04: Definitions**

**5.05: Substantial Value; How Determined**

**5.06: No Violation and No Exemption Needed: Gifts Unrelated to  
Official Action, Position, or Performance of Duties**

**5.07: No Violation: Gifts Worth Less Than \$50; Disclosure May be  
Required; Definition of Disclosure**

[5.08: Gifts Worth \\$50 or More and Related to Official Action or Position: Exemptions](#)

[5.09: Gifts from Lobbyists Not Related to Official Action or Position](#)

[5.10: Political Campaign Contributions: Exemption from Disclosure](#)

[5.11: Glossary of Defined Terms Used in Gift Exemption Regulations](#)

[5.12: Alphabetical Index to Exemptions Related to Gifts to Public Employees](#)

## **5.01: Statutory Prohibitions Concerning Gifts to Public Employees**

There are six sections of the conflict of interest and financial disclosure laws that relate to gifts to public employees. The terms gift, lobbyist, public employee, person, official acts, and substantial value are defined in 930 CMR 5.04 and 5.05. There is a glossary of all terms defined in 930 CMR 5.12. The six statutory sections that relate to gifts to public employees are summarized below:

(a) M.G.L. c. 268A, § 2, which prohibits corrupt gifts, offers, and promises to influence official acts, referred to in 930 CMR 5.02 as bribery.

(b) M.G.L. c. 268A, § 3, which prohibits gifts, offers, and promises of substantial value for or because of official acts performed or to be performed.

(c) M.G.L. c. 268A, § 23(b)(2)(i), which prohibits public employees from soliciting or receiving anything of substantial value for or because of the public employee's official position.

(d) M.G.L. c. 268A, § 23(b)(3), which prohibits a public employee from knowingly, or with reason to know, acting 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 the employee's favor in the performance of the employee's official duties, or that the employee is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

(e) M.G.L. c. 268A, § 26, which prohibits any person from, directly or through another, with fraudulent intent, violating M.G.L. c. 268A, § 23(b)(2); prohibits any person, with fraudulent intent, from causing any other person to violate M.G.L. c. 268A, § 23(b)(2); and prohibits any person, with fraudulent intent, from offering or giving any privileges or exemptions of substantial value in violation of M.G.L. c. 268A, § 23(b)(2), if the unwarranted privileges or exemptions have a fair market value in the aggregate of more than \$1,000 in any 12 month period.

(f) M.G.L. c. 268B, § 6, which prohibits executive or legislative agents from knowingly and willfully offering or giving, to certain public employees and their immediate family members, any gift of any kind or nature, and also prohibits certain public employees and their immediate family members from knowingly and willfully soliciting or accepting from any executive or legislative agent any gift of any kind or nature.

## **5.02: No Exemption for Bribery, Corrupt Gifts, or Gifts Given with Fraudulent Intent**

The State Ethics Commission (Commission) has statutory authority to promulgate exemptions from four of the six statutes listed in 930 CMR 5.01. Specifically, the Commission has authority to promulgate exemptions from M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3), and M.G.L. c. 268B, § 6. It does not have authority to promulgate exemptions from M.G.L. c. 268A, §§ 2 and 26. Nothing in 930 CMR 5.00 shall be construed as creating any exemption from the prohibition against corrupt gifts and bribery set forth in M.G.L. c. 268A, § 2, or the prohibition against gifts given or solicited with fraudulent intent set forth in M.G.L. c. 268A, § 26.

## **5.03: Statutory Authority to Promulgate Exemptions; Effect of Compliance with Regulation; No Inferences to be Drawn as to Conduct Not Specifically Exempted**

M.G.L. c. 268A, §§ 3(f) and 23(f), and M.G.L. c. 268B, §§ 3(a)(2) and 6, give the Commission statutory authority to promulgate exemptions from M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3), and M.G.L. c. 268B, § 6. M.G.L. c. 3, § 43, last paragraph, gives the Commission statutory authority to promulgate exemptions from that statute. Pursuant to that authority, the Commission is promulgating 930 CMR 5.00 to:

(a) clarify situations in which the statutory prohibitions concerning gifts to public employees set forth in M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3) do not apply; and

(b) create exemptions in certain situations in which a gift to a public employee would otherwise be prohibited by M.G.L. c. 268A, §§ 3, 23(b)(2), 23(b)(3), or M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph, because the Commission has determined that allowing acceptance of the gift either serves a legitimate public purpose, or does not present a genuine risk of a conflict of interest or the appearance of a conflict of interest, or both.

(c) A public employee who complies with the exemption requirements of 930 CMR 5.00 is deemed to be in compliance with those provisions of M.G.L. c. 268A, M.G.L. c. 268B, and M.G.L. c. 3 referenced in the relevant section of 930 CMR 5.00.

(d) The establishment of these exemptions shall not be the basis for any inference that conduct not specifically exempted either is, or is not, prohibited by M.G.L. c. 268A, M.G.L. c. 268B, and M.G.L. c. 3.

## **5.04: Definitions**

For purposes of the exemptions set forth in 930 CMR 5.00:

**Gift** is anything of value that is given without something of equivalent fair market value being given in return.

**Lobbyist** is a person who meets the definition of an **Executive Agent** under M.G.L. c. 3, § 39, or the definition of a **Legislative Agent** under M.G.L. c. 3, § 39.

**Official Acts** and **Official Action** are actions taken in one's capacity as a public employee.

**Person** is a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons acting together who share a common interest or purpose.

**Public Employee** is any state, county, or municipal employee, and any special state, county, or municipal employee, as defined in M.G.L. c. 268A, § 1. The term includes full and part time public employees. It applies regardless of how the public employment began, and includes public employees who were appointed or elected to their positions, or hired by a public agency, or those who provide services to a public agency pursuant to an express or implied contract. It also applies to persons serving in both compensated and uncompensated positions. The definition set forth in 930 CMR 5.04: **Public Employee** is for purposes of these exemptions only, and not for purposes related to M.G.L. c. 268B, § 5.

## **5.05: Substantial Value; How Determined**

Substantial value is \$50 or more. The value of a gift is its fair market value at the time of the gift, cost, or face value, whichever is greater. In determining substantial value, the Commission may aggregate all gifts offered or given by a person as defined in 930 CMR 5.04 to a public employee within any 365 day period. If a gift is given to multiple recipients, the value to each public employee shall be the total value of the gift divided by the number of recipients. To determine the value of attendance at an event, the Commission will consider the admission fee, or ticket price, or per person cost to the sponsor, or will divide the actual cost of the event by the number of attendees. The actual cost of an event includes the per person cost of refreshments, entertainment, taxes, service charges, and tips. The actual cost of an event also includes overhead charges for the room and service when these are part of a set fee per person for the event, but does not include any extra fee or charge paid by the host to rent the event venue. Where the Commission has determined the value to a public employee of attendance at an event by dividing the actual cost by the number of attendees, the presumption that an attendee received a gift with a value that is a proportional

share of the actual cost of an event may be rebutted as to a particular individual by evidence that the cost of the items ordered or consumed by that individual and any guests, plus tip, was less than \$50.

**Example:** The face value of a ticket to a sporting event is \$30 but the giver paid \$100. The value of the ticket is \$100, and it is a gift of substantial value.

**Example:** The face value of a ticket to a concert is \$40, but due to the scarcity of such tickets, the fair market value is \$500 at the time of the gift. The value of the ticket is \$500, and it is a gift of substantial value. A person who is given the opportunity to purchase, and does purchase, the ticket at face value has received a gift of \$460, which is of substantial value.

**Example:** The fair market value of meals and entertainment at a charitable event is \$40, but the face value or cost of a ticket to the event is \$150. The value of the ticket is \$150, and it is a gift of substantial value.

**Example:** The total cost, including tax and tip, for a dinner for ten people is \$750. Each public employee attending the dinner is presumed to have received a \$75 dinner, which is of substantial value. This presumption may be rebutted as to a particular individual by evidence that the cost of the items ordered or consumed by that individual and any guests, plus tip, was less than \$50.

**Example:** There is no admission charge to an event but the estimated per person cost of food and drink is \$90. The presumed value of the admission is \$90, and of substantial value. This presumption may be rebutted as to a particular individual by evidence that the cost of the items ordered or consumed by that individual and any guests, plus tip, was less than \$50.

**Example:** The host of an event pays a set fee of \$75 per person for a catered event. The \$75 per person cost includes all refreshments, taxes, service charges, and the rental of the banquet hall. The value of attendance to each attendee is \$75, and it is a gift of substantial value.

**Example:** A company plans a training event to which public employees will be invited. The company pays a fee to rent an auditorium where the training will be held, and separately pays for refreshments to be served during the day. The value of attendance to the public employees who attend is determined by dividing the cost of the refreshments by the number of attendees. The auditorium rental fee is not included.

## **5.06: No Violation and No Exemption Needed: Gifts Unrelated to Official Action, Position, or Performance of Duties**

Public employees may accept any gift that is entirely unrelated to official action by the public employee, and to the public employee's official position, and to the public employee's performance of official duties, from persons other than lobbyists, because these gifts are not prohibited by M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3). No disclosure is required at the time of acceptance of these gifts, but if a matter involving the giver comes before the public employee during the six months following such acceptance, or if such a gift follows any official action by the employee involving the giver within six months, the employee must make a written public disclosure concerning the gift pursuant to M.G.L. c. 268A, § 23(b)(3), using the procedure explained in 930 CMR 5.07(2).

**Example:** A public employee may accept any gift from a member of the public employee's immediate family, other relative, intended spouse, or member of the public employee's household, as long as the gift is entirely unrelated to the employee's performance or nonperformance of official action or duties.

**Example:** A public employee may accept any rebate, discount, or promotional item available to a group that includes, but is not limited to, public employees, or to a geographically defined class that includes the public employee (10% off for Boston residents).

**Example:** A public employee may accept any commercially reasonable loan made in the ordinary course of business if the lender has no direct interest in the performance of the public employee's duties. A lender has a direct interest in the performance of a public employee's official duties if the lender is seeking or is likely to seek official action by the public employee. A public employee may accept a commercially reasonable loan made in the ordinary course of business from a lender who has a direct interest in the performance of the public employee's duties if the public employee first makes a disclosure as required by M.G.L. c. 268A, § 23(b)(3).

**Example:** A public employee may accept any reward or prize given to competitors or entrants in a random drawing open to the public, or any reward or prize given to all attendees at an event (1000<sup>th</sup> attendee at Topsfield fair gets a car).

**Example:** A public employee may accept gifts, meals, and events given and received for reasons entirely unrelated to the recipient's official actions or position, on holidays; occasions of religious significance, including bar mitzvahs and confirmations; occasions of personal significance, including weddings, engagements, birthdays, the birth or adoption of a child, illness, or a relative's illness or death; and occasions of professional significance, including hirings and promotions.

**Example:** A public employee may accept *honoraria* (voluntary, unsolicited payments) unrelated to the employee's official action, position, or duties, as long as the speech or service for which the *honorarium* was given was performed on the employee's own time and without the use of public resources. *Honoraria* related to official positions or actions are dealt with in 930 CMR 5.08(4)(d).

**Example:** A public employee may accept any inheritance unrelated to the employee's official position, or to the employee's performance or nonperformance of official actions or duties.

## **5.07: No Violation: Gifts Worth Less Than \$50; Disclosure May be Required; Definition of Disclosure**

### **(1) Gifts Worth Less Than \$50 are Not Prohibited, but a Disclosure May Still be Required.**

A public employee is not prohibited from accepting an unsolicited gift from a person other than a lobbyist that is not of substantial value as defined in 930 CMR 5.05, unless a reasonable person, having knowledge of the relevant circumstances, would conclude that the public employee could unduly favor the giver or be influenced by the giver when performing official duties. If a gift could create such an appearance of a conflict of interest, pursuant to M.G.L. c. 268A, § 23(b)(3), the employee may accept the gift only if he or she makes a written public disclosure about the gift. Here are examples of situations where a gift is not prohibited because it is not of substantial value, but must be disclosed because it could create an appearance of a conflict of interest:

**Example:** A building inspector accepts a \$40 bottle of wine from a developer whose projects he frequently inspects. The inspector must make a disclosure.

**Example:** A business association's representatives meet with city councilors to discuss association issues. Several weeks after the city council votes in favor of a significant association bill, the association sends a concert ticket worth \$30 to each to the councilors who voted in favor. Each councilor must make a disclosure.

**Example:** A public school teacher accepts a \$25 gift certificate from the parent of a current student. The teacher must make a disclosure.

### **(2) Disclosures: Definition and Procedure.**

A disclosure is a written statement that sets forth all the relevant facts. Such a disclosure may be made on a form prescribed by the Commission or in another writing that discloses the relevant facts. Such disclosures are public records.

(a) A non-elected public employee must make a disclosure to the employee's appointing authority. An appointing authority is the individual official, board, commission, or other governmental body that has the legal authority to appoint, hire, or contract for the services of the public employee, or, where permitted by 930 CMR 5.00, such authority's designee. A disclosure to an appointing authority that is a multi-member body shall be made to the chairperson or designee, and copied to the members of the body. Such multi-member body may, by valid vote of such body, choose to delegate to the chairperson or designee the authority to make any necessary determination in response to such disclosure on behalf of such body, which should then be copied to the members. Judges and judicial branch employees make disclosures required by 930 CMR 5.00 to the Chief Justice of their respective courts, or to his or her designee.

(b) An elected state or county employee must make a disclosure to the Commission. Members of the General Court may make a disclosure to the Senate or House Clerk or to the Commission. An elected state or county employee who is attending an event with members of his or her staff may make a single disclosure for himself or herself and the staff members.

(c) An elected municipal employee must make a disclosure to the town or city clerk, and an elected regional school committee employee must make a disclosure to the clerk or secretary of such committee. An elected municipal or regional school employee who is attending an event with members of his or her staff may make a single disclosure for himself or herself and the staff members.

## **5.08: Gifts Worth \$50 or More and Related to Official Action or Position: Exemptions**

(1) A public employee is not prohibited from accepting a gift worth \$50 or more from a person who is not a lobbyist, where the gift is related to the public employee's official action or position, without violating M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3), if the gift falls within one of these exemptions, and if the public employee complies with all requirements imposed by the exemption.

### **(2) Travel Expenses.**

930 CMR 5.08(2) relates to payment of travel and related expenses for a public employee by anyone other than his or her employing agency, where the purpose of the travel is to engage in an activity that serves a legitimate public purpose. Payment of such expenses by one's employing agency is not a prohibited gift and does not require an exemption.

**(a) Definitions.** For purposes of 930 CMR 5.00:

**1. Travel Expenses.** Travel expenses are necessary and reasonable expenses incurred by a public employee in order to engage in an activity that serves a legitimate public purpose, including air, train, bus, and taxi fare, rental car hire, the cost of meals and lodging, and expenses related to attendance at an event including costs of registration, admission, tickets, food, refreshments, instruction, materials, and entertainment.

**2. Legitimate Public Purpose.** An activity has a "legitimate public purpose" if it is intended to promote the interests of the Commonwealth, a county, or a municipality. Examples of activities with legitimate public purposes include, but are not limited to, the following:

**Example:** Activities that promote tourism, economic development, charitable, public health, environmental, or educational goals;

**Example:** Attendance at training and educational events and conferences designed to improve the efficiencies and effectiveness of public services, or to enhance the knowledge and skills of public employees relative to their official duties;

**Example:** Business travel necessary to make informed purchasing decisions, selections, and inspections;

**Example:** A class field trip that will enable students in a government class to observe proposed legislation being debated, or that will enable students in a Spanish class to hear the language spoken by native speakers;

**Example:** Any purpose defined by an agency's enabling legislation;

**Example:** Any purpose defined as a legitimate public purpose by the agency's governing body or, absent a governing body, chief executive officer, that is in furtherance of the agency's mission.

**(b) Family Members.** 930 CMR 5.08(2) does not authorize acceptance by a public employee of reimbursement, waiver, or payment of travel expenses for a family member or friend accompanying the public employee. Others may accompany a public employee accepting reimbursement, waiver, or payment of travel expenses only at their own expense, and may share the public employee's accommodations if that does not increase the expense, or if they pay any additional cost.

**(c) Travel Expenses Paid by Another Public Agency.** A public employee is not prohibited from accepting reimbursement, waiver, or payment of travel expenses of substantial value, provided by any public agency other than the employee's own, at any level of government, for any purpose in furtherance of the employing public agency's mission, and in accordance with the procedures of the employing agency. No disclosure is required.

**Example:** A District Attorney sends employees to a training conference concerning sexual offenses against children. The District Attorney's sex offense unit typically works with an employee of the state Department of Children and Families (DCF) when it prosecutes such cases. The DCF employee may accept payment of her travel expenses by the District Attorney so that she may attend the conference. No disclosure is required.

**Example:** A law enforcement officer travels out of state to bring a fugitive back to the Commonwealth. The officer's travel expenses may be paid by a prosecutor's office. No disclosure is required.

**(d) Travel Expenses Paid by Non-public Entity.** A public employee is not prohibited from accepting reimbursement, waiver, or payment of travel expenses of substantial value, provided by any person other than a public agency or a lobbyist, if a prior written determination is made as set forth in 930 CMR 5.08(2)(d)1. or 2. that such acceptance will serve a legitimate public purpose, and that such public purpose outweighs any special non-work related benefit to the employee, or to the person providing the reimbursement, waiver, or payment.

**1. Non-elected Public Employees.** A non-elected public employee is not prohibited from accepting reimbursement, waiver, or payment of travel expenses of substantial value, provided by any person other than a public agency or a lobbyist, if the public employee makes a prior written disclosure to the employee's appointing authority, and the appointing authority, or designee, determines in writing and prior to the date of any travel or attendance both that acceptance of such reimbursement, waiver, or payment of expenses will serve a legitimate public purpose, and that such public purpose outweighs any special non-work related benefit to the employee or the person providing the reimbursement, waiver, or payment. Such a disclosure must be made on a form prescribed by the Commission and as provided by 930 CMR 5.07(2).

**2. Elected Public Employees.** An elected public employee is not prohibited from accepting reimbursement, waiver, or payment of travel expenses of substantial value, provided by any person other than a public agency or a lobbyist, if the elected public employee determines in writing prior to any travel or attendance both that acceptance of such reimbursement, waiver, or payment will serve a legitimate public purpose, and that such public purpose outweighs any special non-work related benefit to the employee or to the person providing the reimbursement, waiver, or payment. Such a disclosure must be made on a form prescribed by the Commission and as provided by 930 CMR 5.07(2).

3. If the value of travel expenses accepted by a public employee exceeds what was previously disclosed by \$50 or more, the public employee shall submit a reconciliation statement within two weeks after the travel is completed, in the same manner as the original disclosure was made, on a form prescribed by the Commission.

4. In addition to the disclosure required at the time of acceptance of any such reimbursement, waiver, or payment, if a particular matter involving the giver comes before the public employee during the six months following such acceptance, the employee must make a written public disclosure pursuant to M.G.L. c. 268A, § 23(b)(3).

**(e) In-state Travel for Educational Purposes.** Except where the giver is a lobbyist, a public employee is not prohibited from accepting reimbursement, waiver, or payment of expenses of substantial value related to the public employee's attendance or participation, including as a panelist or speaker, at in-state educational programs involving professional or other continuing education, including in-state educational, training and planning sessions required by state or federal law, when the public employee has a good faith belief that his or her attendance will serve a legitimate public purpose, as defined in 930 CMR 5.08(2)(a)2., which outweighs any special non-work related benefit to the employee, or to the person providing the reimbursement, waiver, or payment. Educational events involving out-of-state travel are addressed in 930 CMR 5.08(2)(c) and (d). No disclosure is required, except that if a particular matter involving the giver either has come before the public employee in the six months prior to such acceptance, or comes before the public employee during the six months following such acceptance, the employee must make a written public disclosure pursuant to M.G.L. c. 268A, § 23(b)(3).

**Example:** Police, fire, and public works employees who would be first responders to emergency incidents involving natural gas may attend in-state training sessions sponsored by the natural gas companies, and

may accept payment of travel expenses and hospitality of substantial value. The public employees are only required to make a disclosure if a matter involving the sponsoring utility has come before them in the six months prior to the training, or comes before them in the six months following the training.

### **(3) Incidental Hospitality That Serves a Public Purpose.**

Unless the giver is a lobbyist, elected public employees, and their staff members, are not prohibited from accepting payment or waiver of expenses of substantial value (including cost of admission, refreshments, and transportation within the Commonwealth) related to attendance by the elected public employee or staff member at weekday informational programs at which incidental hospitality is provided, as set forth in 930 CMR 5.08(3)(a). Elected and non-elected public employees are not prohibited from accepting payment or waiver of such expenses related to attendance at events at which their attendance serves a legitimate public purpose, as set forth in 930 CMR 5.08(3)(b). 930 CMR 5.08(3) does not authorize acceptance of gifts from lobbyists, which are treated separately below in 930 CMR 5.09, and it also does not eliminate any requirement of reporting imposed by M.G.L. c. 3. A disclosure is required in the circumstances set forth in 930 CMR 5.08(3)(b).

**(a) Elected Public Employees and Their Staff: No Disclosure Required for Attendance at Weekday Informational Programs at Which Incidental Hospitality is Provided.** An elected public employee, and a member of the staff of an elected public employee, are not prohibited from accepting payment or waiver of expenses of substantial value (including cost of admission, refreshments, and transportation within the Commonwealth) related to attendance at a weekday group program, the primary purpose of which is to give the elected public employee or staff member information concerning current issues in the Commonwealth, and at which any related hospitality provided is incidental to the primary informational purpose, comparable to the examples below. No disclosure is required.

**Example:** A State Representative attends monthly Chamber of Commerce breakfast meetings in his district so as to keep informed about issues of interest to business owners in his district. Attending the meetings has substantial value because a number of small meetings sponsored by the same entity are aggregated. The Representative may accept the cost of refreshments at the breakfasts, and no disclosure is required.

**Example:** A legislative aide to a State Senator regularly attends State House programs sponsored by a variety of different groups, including constituents, business associations, and nonprofit organizations. Some or all of these groups may have an interest in legislation before the Senate. Pastries, sandwiches, drinks, and other refreshments are provided. The value may or may not be substantial. The aide attends these programs in order to be informed about the views of various entities on matters that may come before her Senator. The aide may accept the cost of refreshments at the State House programs, and no disclosure is required.

**Example:** Members of a legislative caucus are offered bus transportation to a manufacturing site, lunch, and a tour of the site. The purpose of the tour is to inform the members of the circumstances of a Commonwealth industry. The transportation, lunch and tour are of substantial value. The members may accept the costs of the transportation, lunch and tour, and no disclosure is required.

**Example of What is Not Permissible:** An individual legislator is invited to lunch by a partner at a law firm who is not a personal friend of the legislator. The cost of the lunch exceeds \$50. The two spend the majority of the time discussing pending legislation in which clients of the lawyer have an interest. This example does not fall within this exemption because it is a lunch, not a group informational program. The legislator may attend the lunch but must pay for his own lunch.

**(b) Non-elected and Elected Public Employees: Disclosure Required for Attendance at Events Where Attendance Serves a Legitimate Public Purpose.** Non-elected and elected public employees are not prohibited from accepting payment or waiver of expenses of substantial value (including cost of admission, refreshments, and transportation within the Commonwealth) related to attendance at an event, if there is a prior written determination that attendance at such event serves a legitimate public purpose as defined in 930 CMR 5.08(2)(a)2., and that such public purpose outweighs any special non-work related benefit to the employee, or to the person providing the payment or waiver of expenses. The determination of legitimate public purpose must be made on a form prescribed by the Commission and as provided by 930 CMR 5.07(2).

**Example:** A legislator is invited to attend a fundraiser dinner for a charitable organization. She is not asked to make the \$250 contribution that would otherwise be required for attendance at the dinner. The legislator determines that her attendance at the event will increase public awareness of the cause assisted by the

charity, and that this will serve a legitimate public purpose. The legislator fills out the disclosure form required by 930 CMR 5.08(3)(b), and may accept the waiver of the attendance fee.

**Example:** A city councilor directs his aide to attend a basketball game to which an admission fee of \$75 is being charged to raise money for a local Boys & Girls Club. The fee is waived for the councilor and/or his aide. The councilor makes a written determination in advance of the event that the aide's attendance at the event will increase the visibility of charitable activities promoted by the Boys & Girls Club, and that this will serve a legitimate public purpose. The aide may attend the event, and may accept waiver of the admission fee.

#### **(4) Legitimate Speaking Engagements.**

A public employee who is invited to participate in a legitimate speaking engagement in whole or in part because of his official position or actions is not prohibited from accepting travel expenses for the public employee and for any of his or her staff necessary to carry out the speaking engagement. The travel expenses may cover only the day or days on which the public employee has participation or presentation responsibilities and the days on which the public employee must travel to the conference and return to the Commonwealth. A public employee who presents on the first day of a week-long conference can accept travel expenses in connection with the other days only in accordance with 930 CMR 5.08(2).

(a) A legitimate speaking engagement means giving a speech or serving on a panel where the speech or panel:

1. is formally scheduled on the agenda of a meeting, conference, or event;
2. is scheduled in advance of the speaker's or panelist's arrival at the meeting, conference, or event;
3. is before an organization that would normally have speakers or panelists address its members at such meeting, conference, or event; and
4. significantly contributes to the meeting, conference, or event, taking into account such factors as the length of the speech or presentation, the expected size of the audience, and the extent to which the speaker is providing substantive information or commentary.

(b) Travel expenses include the expenses set forth in 930 CMR 5.08(2)(a)1. and, in addition, provision of refreshments, food, and drink at the legitimate speaking engagement.

(c) A public employee who accepts travel expenses in connection with a legitimate speaking engagement must make a prior written public disclosure on a form prescribed by the Commission and as provided by 930 CMR 5.07(2).

(d) **Honoraria.** A public employee who participates in a legitimate speaking engagement is not prohibited from accepting an *honorarium*, (that is, a voluntary, unsolicited payment) customary to the practice of the entity awarding the *honorarium* only if:

1. delivering the speech is not part of the public employee's official duties;
2. public resources are not used in the preparation of the speech;
3. public time is not taken for the preparation or delivery of the speech; and
4. neither the sponsor of the address nor the source of the *honorarium* is a person or entity with whom the public employee has had or reasonably expects to have dealings in his or her official duties; and
5. the public employee makes a prior written disclosure concerning the *honorarium*.

A public employee who may not accept an *honorarium* may request that the donor instead give it to charity, but may not identify any particular charity. If the public employee makes such a request, this exemption does not eliminate any possible tax consequences.

#### **(5) Honorary Degrees.**

A public employee is not prohibited from accepting an honorary degree from a public or private educational institution given in whole or in part for the employee's official actions or position, provided that the degree

does not include a monetary award of substantial value. The public employee who is receiving the degree may also accept payment or reimbursement of reasonable travel expenses related to any conferral ceremony given to the employee and guests accompanying the employee in accordance with the criteria and policies of the educational institution. If a particular matter involving the giver came before the public employee during the six months prior to such acceptance, or comes before the public employee during the six months following such acceptance, the employee must make a written public disclosure pursuant to M.G.L. c. 268A, § 23(b)(3).

#### **(6) Awards for Meritorious Public Service or Lifetime Achievement.**

A public employee may accept an award for meritorious public service or lifetime achievement based in whole or in part on work done as a public employee, provided that the award is part of a program that makes such awards on a regular basis pursuant to established standards developed by the awarding entity. The public employee who is receiving the award may also accept payment or reimbursement of reasonable travel and travel-related expenses to any award ceremony given to the employee and guests accompanying the employee, and any display item related to the degree or award (such as a trophy, plaque, bowl, desk ornament, or certificate) in accordance with the criteria and policies of the degree or award program. A public employee receiving an award pursuant to this exemption may accept a monetary award or stipend only if the public employee has not had, and does not reasonably expect to have, dealings in his or her official duties with either the awarding entity or any sponsors of the award. If a particular matter involving the awarding entity, or a sponsor of the award, comes before the public employee during the six months following such acceptance, the employee must make a written public disclosure pursuant to M.G.L. c. 268A, § 23(b)(3). 930 CMR 5.08(6) does not authorize acceptance of testimonial dinners that would be prohibited by M.G.L. c. 268, § 9A.

#### **(7) Public Employee Discounts and Waived Membership Fees.**

A public employee may accept a public employee discount of substantial value, if the discount is available to a class consisting of all public employees, or to a class consisting of all public employees from a city or town, county, or state, or to a geographically defined class of public employees. A public employee may accept a reduced or waived membership fee offered by a professional organization, of substantial value, if the reduced or waived fee is available to a class of similarly situated public employees of that profession. A public school teacher may accept a discount available to teachers for purchase of items to be used for educational purposes.

#### **(8) Gifts Among Public Employees.**

(a) Public employees are not prohibited from giving to other public employees who are not their official superiors, and public employees are not prohibited from accepting from other public employees who are not their subordinates, gifts of substantial value, in recognition of holidays; occasions of religious significance; occasions of personal significance including weddings, engagements, birthdays, the birth or adoption of a child, illness, a relative's illness or death; occasions of professional significance including hirings, promotions, and noteworthy accomplishments or achievements; and occasions that terminate a professional working relationship, such as retirement, transfer, or resignation.

(b) On an occasional basis, the following individual gifts to an official superior are not prohibited:

1. gifts other than cash or gift certificates that are valued at no more than \$10;
2. food and refreshments shared in the office;
3. personal hospitality in the employee's home that is the same as that customarily provided to personal friends;
4. gifts given in connection with the receipt of personal hospitality that are customary to the occasion, such as a bottle of wine to the host of a dinner party; and
5. transferred leave, provided that it is done in a way that prevents donors from targeting identified recipients, and recipients from learning the identity of donors.

(c) On special infrequent occasions a gift appropriate to that occasion to an official superior is not prohibited. These occasions include events of personal significance, such as marriage, illness, or the birth or adoption of a child, or occasions that terminate the subordinate- superior relationship, such as retirement, resignation, or transfer. Employees may solicit or contribute, on a strictly voluntary basis, nominal amounts of \$10 or less for a group gift to an official superior on a special infrequent occasion, and occasionally for items such as food and refreshments to be shared among employees at the office.

(d) Notwithstanding 930 CMR 5.08(8)(b) and (c), 930 CMR 5.08(8) does not authorize knowing acceptance of any gift made as a result of coercion or duress, which is never permissible.

### **(9) Ceremonial Gifts and Privileges.**

A public employee is not prohibited from accepting admission of substantial value to a public event from the sponsor or organizer of the event, where the public employee is expected to perform a ceremonial function. For purposes of 930 CMR 5.08(9), a ceremonial function means that the public employee will perform some action beyond simple attendance that is different from what is expected of other attendees, such as throwing the first pitch at a baseball game, cutting a ribbon at the opening of a bridge, turning over the first shovelful of dirt at a public construction project, bestowing wreaths on the winners of the Boston Marathon, and similar actions. A public employee may accept unsolicited gifts customary to the occasion (such as a baseball when throwing the first pitch, or an engraved shovel when breaking ground for a public project) after performing such a ceremonial function.

### **(10) Retirement Gifts.**

A public employee is not prohibited from accepting gifts of substantial value appropriate to the occasion from members of the public with whom the public employee has worked when the public employee retires, provided that such gifts reflect general goodwill toward the retiring employee or recognize the employee's service generally, and are not intended as a reward for any specific past official action. 930 CMR 5.08(10) does not authorize acceptance of testimonial dinners that would be prohibited by M.G.L. c. 268, § 9A.

### **(11) Unsolicited Perishable Items.**

A public employee is not prohibited from accepting unsolicited gifts of items that are perishable or otherwise impractical to return (such as flowers, plants, floral arrangements, and fruit baskets, or boxes of candy) if such item is made generally accessible to other persons in the employee's agency and to the general public to the extent possible, or given to charity.

### **(12) Admission to Political Campaign Events for Elected Officials and their Staff Members.**

A campaign is not prohibited from giving, and an elected public employee and his or her staff are not prohibited from accepting, admission to an event paid for with campaign funds, when the event is paid for in accordance with M.G.L. c. 55 and no public resources are used.

### **(13) Gifts Received and Held Temporarily as Part of Charitable Activities.**

A public employee participating as such in a public agency's charitable activities is not prohibited from receiving, and temporarily holding, items being collected as part of such effort, provided that the items are turned over to their ultimate recipients within a reasonable time, and that the ultimate recipient is informed of the source of the donation.

**Example:** An office supply company wishes to donate backpacks of school supplies to needy children, and enlists the help of certain legislators in distributing the backpacks. The legislators may hold the backpacks temporarily while waiting to turn them over to their ultimate recipients, and must inform the ultimate recipients of the identity of the donor.

#### **(14) Class Gifts to Teachers.**

A public school department employee is not prohibited from accepting a gift, or several gifts during the school year, from public school students and/or their parents and guardians, with an aggregated value of up to \$150, if the gift is identified only as being from the class, and the identity of givers and amounts given are not identified to the recipient. Parents may also give gifts to the classroom or the school in accordance with the rules of the school district. Gifts received pursuant to this exemption are not required to be disclosed because the givers are not identified to the teacher. Public school department employees must disclose gifts received from individual students, parents, and guardians that are not class gifts as explained in 930 CMR 5.07.

**Example:** A teacher has a class with 23 students. Parents of 20 of the students collect money and give the teacher a \$150 gift certificate to a book store, indicating that it is a class gift. One of the parents who did not contribute to the class gift gives the teacher a \$25 certificate to a spa. The teacher may accept the \$150 class gift certificate and no disclosure is required. The teacher may not accept any other gift from the parents who contributed to the class gift. The teacher may accept the \$25 spa certificate, but must file a disclosure pursuant to M.G.L. c. 268A, § 23(b)(3).

**Example:** A teacher has a class with 23 students. Parents of 13 of the students collect money and give the teacher a \$130 gift certificate to a book store, indicating that it is a class gift. Parents of the other ten students collect money and give the teacher a \$100 gift certificate to an office supply store, indicating that the gift is a gift to the classroom and that the teacher should use it to buy necessary classroom supplies. The teacher can accept the first gift on his own behalf and the second on behalf of the classroom. He must spend the \$100 office supply gift certificate on classroom supplies and should keep receipts documenting those purchases. Items purchased with money that is a gift to the classroom is the property of the school district. The teacher may not knowingly accept any additional gift from parents who participated in the class gift.

#### **(15) Passes to School Events.**

An employee of a public school department, a regional school district, an educational collaborative, or a school committee member is not prohibited from accepting a pass of substantial value given by the district to public school sports and entertainment events of the school district where the employee is employed.

#### **(16) Drawings.**

A public employee is not prohibited from accepting any reward or prize given to competitors or entrants in a random drawing in which the other competitors or entrants are public employees, including a drawing at an event where the public employee's agency paid for the employee to attend the event.

### **5.09: Gifts from Lobbyists Not Related to Official Action or Position**

#### **(1) Applicability.**

Lobbyists are prohibited by M.G.L. c. 268B, § 6 from giving gifts to any public official or public employee as those terms are defined in M.G.L. c. 268B, § 1, and to members of their immediate family. The definition of a public official and a public employee under M.G.L. c. 268B, § 1 are different from, and narrower than, the definition of a public employee as used elsewhere in 930 CMR 5.00. Under that narrower definition, the prohibition against lobbyists' gifts set forth in M.G.L. c. 268B, § 6 applies only to statewide elected officials, and persons required to file Statements of Financial Interest pursuant to M.G.L. c. 268B, § 5. Lobbyists are also subject to M.G.L. c. 3, § 43, last paragraph, which prohibits them from giving public officials and public employees gifts, meals, beverages, or other items to be consumed.

#### **(2) Exemption.**

Lobbyists, as defined in 930 CMR 5.04, are not prohibited from giving, and Public officials and public employees, as defined in M.G.L. c. 268B, § 1, are not prohibited from accepting, the following from a lobbyist or the lobbyist's spouse, if the gift is purchased with the giver's personal funds and not with funds

belonging to the giver's employer, client, or institution, the public employee reasonably believes that only the giver's personal funds were used, and the gift is given and received solely because of family or established personal friendship:

(a) meals in the donor's home; and

(b) gifts on occasions of religious significance including, for example, confirmations and bar mitzvahs; and occasions of personal significance including weddings, engagements, the birth or adoption of a child, and the illness or death of a relative. A birthday is not an "occasion of personal significance" for purposes of this exemption.

**Example:** A childhood friend of a State Representative is a lobbyist. Over the years, the two have exchanged gifts on the occasion of significant life events such as weddings and the births of their children. The lobbyist uses her personal funds to purchase two place settings, worth \$300, as a wedding present for the Representative's daughter. The gift is not prohibited.

(c) A public employee may accept any gift or inheritance from a lobbyist who is a member of the public employee's immediate family, other relative, intended spouse, or member of the public employee's household, if the gift is purchased with the giver's personal funds and not with funds belonging to the giver's employer, client, or institution, and is given and received solely because of the family or comparable relationship.

(d) 930 CMR 5.09 is an exemption from the prohibition against gifts by lobbyists contained in M.G.L. c. 3, § 43, last paragraph, as well as from M.G.L. c. 268A, §§ 3 and 23, and c. 268B, § 6.

## **5.10: Political Campaign Contributions: Exemption from Disclosure**

A contribution made and reported in accordance with M.G.L. c. 55 is not required to be the subject of a separate, additional disclosure pursuant to M.G.L. c. 268A, § 23(b)(3). A person acting within this exemption remains subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, §§ 3 and 23(b)(2).

**Example:** A lawyer contributes to the campaign of a candidate for State Auditor, and the contribution is reported pursuant to M.G.L. c. 55. Later, the lawyer has a matter before the Auditor's office. The Auditor is not required to make an additional disclosure of the contribution pursuant to M.G.L. c. 268A, § 23(b)(3), because it has already been disclosed in compliance with the campaign finance law, but remains subject to the prohibition of M.G.L. c. 268A, § 23(b)(2) against using the Auditor's position to give the lawyer any unwarranted privilege of substantial value.

**Example of What is Not Permitted:** A candidate for Select Board asks the Town Manager to contribute to her reelection campaign. This is a solicitation of a contribution from a subordinate and is prohibited by M.G.L. c. 268A, § 23(b)(2).

## **5.11: Glossary of Defined Terms Used in Gift Exemption Regulations**

**Ceremonial Function**, defined in 930 CMR 5.08(9), means that the public employee will perform some action beyond simple attendance that is different from what is expected of other attendees, such as throwing the first pitch at a baseball game, cutting a ribbon at the opening of a bridge, turning over the first shovelful of dirt at a public construction project, bestowing wreaths on the winners of the Boston Marathon, and similar actions.

**Commission**, defined in 930 CMR 5.02, means the State Ethics Commission.

**Direct Interest in the Performance of a Public Employee's Official Duties**, defined in 930 CMR 5.06, means that a person is seeking or is likely to seek official action by the public employee.

**Disclosure**, defined in 930 CMR 5.07(2), means a written statement that sets forth all the relevant facts. Such a disclosure may be made on a form prescribed by the Commission or in another writing that discloses the relevant facts. Such disclosures are public records.

(a) A non-elected public employee must make a disclosure to the employee's appointing authority. An appointing authority is the individual official, board, commission, or other governmental body that has the legal authority to appoint, hire, or contract for the services of the public employee, or, where permitted by 930 CMR 5.00, such authority's designee. A disclosure to an appointing authority that is a multi-member body shall be made to the chairperson or designee and copied to the members of the body. Such multi-member body may, by valid vote of such body, choose to delegate to the chairperson or designee the authority to make any necessary determination in response to such disclosure on behalf of such body, which should then be copied to the members. Judges and judicial branch employees make disclosures required by 930 CMR 5.00 to the Chief Justice of their respective courts, or to his or her designee.

(b) An elected state or county employee must make a disclosure to the Commission. Members of the General Court may make a disclosure to the Senate or House Clerk or to the Commission. An elected state or county employee who is attending an event with members of his or her staff may make a single disclosure for himself or herself and the staff members.

(c) An elected municipal employee must make a disclosure to the town or city clerk, and an elected regional school committee employee must make a disclosure to the clerk or secretary of such committee. An elected municipal or regional school employee who is attending an event with members of his or her staff may make a single disclosure for himself or herself and the staff members.

**Gift**, defined in 930 CMR 5.04, means anything of value that is given without something of equivalent fair market value being given in return.

**Legitimate Public Purpose**, defined in 930 CMR 5.08(2)(a)2., means that the activity is intended to promote the interests of the Commonwealth, a county, or a municipality; examples are given in the defining regulation.

**Legitimate Speaking Engagement**, defined in 930 CMR 5.08(4)(a), means giving a speech or serving on a panel where the speech or panel is formally scheduled on the agenda of a meeting, conference, or event; is scheduled in advance of the speaker's or panelist's arrival at the meeting, conference, or event; is before an organization that would normally have outside speakers or panelists address its members at such meeting, conference, or event; and significantly contributes to the meeting, conference, or event, taking into account such factors as the length of the speech or presentation, the expected size of the audience, and the extent to which the speaker is providing substantive information or viewpoints.

**Lobbyist**, defined in 930 CMR 5.04, means a person who meets the definition of an executive agent under M.G.L. c. 3, § 39, or the definition of a legislative agent under M.G.L. c. 3, § 39.

**Official Action**, defined in 930 CMR 5.04, means action taken in one's capacity as a public employee.

**Person**, defined in 930 CMR 5.04, means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons acting together who share a common interest or purpose.

**Public Employee**, defined in 930 CMR 5.04, means any state, county, or municipal employee, and any special state, county, or municipal employee, as defined in M.G.L. c. 268A, § 1. The term includes full and part time public employees. It applies regardless of how the public employment began, and includes public employees who were appointed or elected to their positions, or hired by a public agency, or those who

provide services to a public agency pursuant to an express or implied contract. It also applies to persons serving in both compensated and uncompensated positions. 930 CMR 5.04: Public Employee is for purposes of these exemptions only, and not for purposes of M.G.L. c. 268B, § 5.

**Substantial Value**, defined in 930 CMR 5.05, is \$50 or more. 930 CMR 5.05 explains in detail how the Commission calculates substantial value.

**Travel Expenses**, defined in 930 CMR 5.08(2)(a)1., are necessary and reasonable expenses incurred by a public employee in order to engage in an activity that serves a legitimate public purpose, including air, train, bus, and taxi fare, rental car hire, the cost of meals and lodging, and expenses related to attendance at an event including costs of registration, admission, tickets, food, refreshments, instruction, materials, and entertainment.

## 5.12 Alphabetical Index to Exemptions Related to Gifts to Public Employees

Topic	Regulatory Section	Pages
Admission to Event	<a href="#">930 CMR 5.08(3)</a>	<a href="#">28</a>
Attendance at Event	<a href="#">930 CMR 5.08(3)</a>	<a href="#">28</a>
Award	<a href="#">930 CMR 5.08(6)</a>	<a href="#">30</a>
Birth or Adoption of Child	<a href="#">930 CMR 5.06</a> , <a href="#">5.08(8)</a> , <a href="#">5.09</a>	<a href="#">27</a> , <a href="#">31</a> , <a href="#">33</a>
Birthday	<a href="#">930 CMR 5.06</a> , <a href="#">5.08(8)</a> , <a href="#">5.09(2)(b)</a>	<a href="#">25</a> , <a href="#">31</a> , <a href="#">33</a>
Campaign Contributions	<a href="#">930 CMR 5.10</a>	<a href="#">33</a>
Ceremonial Function	<a href="#">930 CMR 5.08(9)</a>	<a href="#">31</a>
Ceremonial Gifts and Privileges	<a href="#">930 CMR 5.08(9)</a>	<a href="#">31</a>
Charitable Activities	<a href="#">930 CMR 5.08(13)</a>	<a href="#">32</a>
Class Gift to Teacher	<a href="#">930 CMR 5.08(14)</a>	<a href="#">32</a>
Commission	<a href="#">930 CMR 5.02</a>	<a href="#">23</a>
Conference	<a href="#">930 CMR 5.08(2)</a> , <a href="#">(3)</a> , <a href="#">(4)</a>	<a href="#">27</a> , <a href="#">28</a> , <a href="#">30</a>
Direct Interest in Performance of Duties	<a href="#">930 CMR 5.06</a>	<a href="#">27</a>
Disclosure, Definition	<a href="#">930 CMR 5.07(2)</a>	<a href="#">26</a>
Discount	<a href="#">930 CMR 5.06</a> , <a href="#">5.08(7)</a>	<a href="#">27</a> , <a href="#">31</a>
Display Items	<a href="#">930 CMR 5.08(6)</a>	<a href="#">30</a>

Drawings	<a href="#">930 CMR 5.06, 5.08(16)</a>	<a href="#">27, 33</a>
Educational Events	<a href="#">930 CMR 5.08(2), (3)</a>	<a href="#">27, 28</a>
Engagement	<a href="#">930 CMR 5.06, 5.08(8), 5.09(2)(b)</a>	<a href="#">27, 31, 33</a>
Executive Agents	<a href="#">930 CMR 5.04, 5.09</a>	<a href="#">24, 33</a>
Family	<a href="#">930 CMR 5.06, 5.08(2)(b), 5.08(6), 5.08(8), 5.09</a>	<a href="#">27, 30, 31</a>
Flowers and Plants	<a href="#">930 CMR 5.08(11)</a>	<a href="#">32</a>
Food	<a href="#">930 CMR 5.08(2), (3), (4), (5), (6), (8), (11), 5.09</a>	<a href="#">27, 28, 30, 31, 32</a>
Friendship	<a href="#">930 CMR 5.06, 5.08(8), 5.09</a>	<a href="#">27, 31, 33</a>
Gift, Definition	<a href="#">930 CMR 5.04</a>	<a href="#">24</a>
Glossary of Defined Terms	<a href="#">930 CMR 5.11</a>	<a href="#">32</a>
Holiday	<a href="#">930 CMR 5.06, 5.08(8)</a>	<a href="#">27, 31</a>
Honorarium	<a href="#">930 CMR 5.08(4)(d)</a>	<a href="#">30</a>
Honorary Degree	<a href="#">930 CMR 5.08(5)</a>	<a href="#">30</a>
Household, Member of	<a href="#">930 CMR 5.06, 5.09(2)(c)</a>	<a href="#">27, 31</a>
Illness or Death of Relative	<a href="#">930 CMR 5.06, 5.08(8), 5.09</a>	<a href="#">27, 31, 33</a>
Incidental Hospitality	<a href="#">930 CMR 5.08(3)</a>	<a href="#">28</a>
Inheritance	<a href="#">930 CMR 5.06, 5.09(2)(c)</a>	<a href="#">27, 33</a>
Intended Spouse	<a href="#">930 CMR 5.06, 5.09(2)(c)</a>	<a href="#">27, 33</a>
Legitimate Public Purpose, Definition	<a href="#">930 CMR 5.08(2)(a)2</a>	<a href="#">27</a>
Legitimate Speaking Engagement	<a href="#">930 CMR 5.08(4)(a)</a>	<a href="#">30</a>

Topic	Regulatory Section	Pages
Legislative Agents	<a href="#">930 CMR 5.04, 5.09</a>	<a href="#">24, 33</a>
Lifetime Achievement	<a href="#">930 CMR 5.08(6)</a>	<a href="#">30</a>
Loan	<a href="#">930 CMR 5.06</a>	<a href="#">27</a>
Lobbyist, Definition	<a href="#">930 CMR 5.04</a>	<a href="#">24</a>
Lodging	<a href="#">930 CMR 5.08(2), (4), (5), (6)</a>	<a href="#">27, 30</a>

Meals	<a href="#">930 CMR 5.08(2) through (6), (8), 5.09</a>	<a href="#">27-31, 33</a>
Meritorious Public Service	<a href="#">930 CMR 5.08(6)</a>	<a href="#">30</a>
Not Related to Official Action or Position	<a href="#">930 CMR 5.06</a>	<a href="#">25</a>
Official Action, Definition	<a href="#">930 CMR 5.04</a>	<a href="#">24</a>
Passes to School Events	<a href="#">930 CMR 5.08(15)</a>	<a href="#">32</a>
Perishable Items	<a href="#">930 CMR 5.08(11)</a>	<a href="#">32</a>
Person, Definition	<a href="#">930 CMR 5.04</a>	<a href="#">24</a>
Personal Significance, Occasion of	<a href="#">930 CMR 5.06, 5.08(8), 5.09</a>	<a href="#">25, 31, 33</a>
Political Campaign Events	<a href="#">930 CMR 5.08(12)</a>	<a href="#">32</a>
Prize	<a href="#">930 CMR 5.06, 5.08(6), 5.08(16)</a>	<a href="#">25, 30, 33</a>
Professional Organization Fee	<a href="#">930 CMR 5.08(7)</a>	<a href="#">31</a>
Promotional Item	<a href="#">930 CMR 5.06</a>	<a href="#">25</a>
Public Employee, Definition	<a href="#">930 CMR 5.04</a>	<a href="#">24</a>
Public Employees, Gifts Among	<a href="#">930 CMR 5.08(8)</a>	<a href="#">31</a>
Rebate	<a href="#">930 CMR 5.06</a>	<a href="#">25</a>
Relative	<a href="#">930 CMR 5.06, 5.08(8), 5.09</a>	<a href="#">25, 31, 33</a>
Religious Significance, Occasion of	<a href="#">930 CMR 5.06, 5.08(8), 5.09</a>	<a href="#">25, 31, 33</a>
Retirement	<a href="#">930 CMR 5.08(8), (10)</a>	<a href="#">31, 32</a>
School Passes	<a href="#">930 CMR 5.08(15)</a>	<a href="#">32</a>
Substantial Value	<a href="#">930 CMR 5.05</a>	<a href="#">24</a>
Teachers	<a href="#">930 CMR 5.08(14)</a>	<a href="#">32</a>
Travel Expenses	<a href="#">930 CMR 5.08(2), (3), (4), (5), (6)</a>	<a href="#">27-30</a>
Value of Less than \$50	<a href="#">930 CMR 5.07</a>	<a href="#">26</a>
Value \$50 or Greater	<a href="#">930 CMR 5.06, 5.08</a>	<a href="#">25, 27</a>
Wedding	<a href="#">930 CMR 5.06, 5.08(8), 5.09</a>	<a href="#">25, 31, 33</a>

*REGULATORY AUTHORITY*

930 CMR 6.00: M.G.L. c. 268A, §§ 3(f), 23(f); c. 268B, §§ 3(a)(2) and (6) and c. 3, § 43, last paragraph.

## 930 CMR 6.00: EXEMPTIONS UNRELATED TO GIFTS

[See Alphabetical Index to Exemptions Unrelated to Gifts](#)

### Section

- [6.01: Statutory Authority to Promulgate Exemptions](#)
- [6.02: Exemptions to Encourage Volunteer Public Service, and to Promote Education, Training, and Professional Development](#)
- [6.03: Exemption to Permit Public Employees Who Are Parents to Advocate for Their Children](#)
- [6.04: Exemption for Volunteer Medical or Rescue Organizations in Exigent Circumstances](#)
- [6.05: Exemption for Certain Payments by the Department of Children and Families](#)
- [6.06: Exemption to Permit State Employees to Provide Services to the Massachusetts Committee for Public Counsel Services](#)
- [6.07: Exemption to Permit State Employees to Provide Personal Services to State Agency Clients](#)
- [6.08: Exemption for Board Members Appointed by Public Agency](#)
- [6.09: Exemption for School Committee Members and Charter School Trustees](#)
- [6.10: Exemption to Permit the Conveyance of Fee Interests, Restrictions, and Easements by Public Employees](#)
- [6.11: Exemption to Allow Public Employees to Hold Additional Jobs on Premises Occupied Pursuant to Contract or Agreement With Public Agencies](#)
- [6.12: Exemption to Permit Public Employees to Participate in Mitigation, Disaster Relief, and Renewable Energy Programs](#)
- [6.13: Exemptions to Permit Public Agencies to Contract With Attorneys and Other Consultants of Choice](#)
- [6.14: Exemption of Affordable Housing Programs and Community Development Programs](#)
- [6.15: Exemption of Eminent Domain Settlements](#)
- [6.16: Exemption of Fee-based Contractual Relationships Readily Available to the Public](#)
- [6.17: Exemption Related to Senior Tax Abatement Programs](#)
- [6.18: Census Employment](#)
- [6.19: Exemption Permitting Public Employees to Purchase or Rent Housing and Parking Units in Multi-unit Buildings Subject to Contractual Arrangements With Public Agencies, When Such Transactions Are Readily Available to the General Public](#)
- [6.20: Exemption Permitting Town Clerks to Perform Certain Election-related Functions](#)
- [6.21: Alphabetical Index to Exemptions Unrelated to Gifts](#)

## **6.01: Statutory Authority to Promulgate Exemptions**

- (1) The State Ethics Commission (Commission) has statutory authority to promulgate exemptions from M.G.L. c. 268A, §§ 3 through 7, 11 through 14, 17 through 20, and 23, pursuant to M.G.L. c. 268B, § 3(a)(2). Pursuant to that authority, the Commission is promulgating 930 CMR 6.00 to create exemptions that will permit, in certain situations, conduct which would otherwise be prohibited by M.G.L. c. 268A, §§ 4 through 7, 11 through 14, 17 through 20, and/or 23, because the Commission has determined that the conduct either serves a legitimate public purpose, or does not present a genuine risk of a conflict of interest or the appearance of a conflict of interest, or both. Exemptions related to gifts to public employees are set forth in 930 CMR 5.00; other exemptions are set forth in 930 CMR 6.00. An alphabetical index of these exemptions is set forth in 930 CMR 6.21.
  
- (2) The exemptions created by 930 CMR 6.00 are in addition to those set forth in M.G.L. c. 268A unless the contrary is stated explicitly.
  
- (3) For purposes of these exemptions only, and not for purposes of M.G.L. c. 268B, a public employee is any state, county, or municipal employee, and any special state, county, or municipal employee, as defined in M.G.L. c. 268A, § 1. The term includes full and part-time public employees. It applies regardless of how the public employment began, and includes public employees who were appointed or elected to their positions, or hired by a public agency, or those who provide services to a public agency pursuant to an express or implied contract. It also applies to persons serving in both compensated and uncompensated positions. The definition set forth in 930 CMR 6.01(3): Public Employee is for purposes of these exemptions only, and not for purposes related to M.G.L. c. 268B, § 5. A public employee who complies with the requirements of an exemption in 930 CMR 6.00 is deemed to be in compliance with the sections of M.G.L. c. 268A referenced in that exemption.
  
- (4) The establishment of these exemptions shall not be the basis for any inference that conduct not specifically exempted either is, or is not, prohibited by M.G.L. c. 268A.
  
- (5) The exemptions in 930 CMR 6.00 shall be construed to advance their stated purposes.
  
- (6) For purposes of these exemptions, a disclosure is a written statement that sets forth all the relevant facts. A disclosure is a public record.
  - (a) A non-elected public employee makes a disclosure to the employee's appointing authority. An appointing authority is the individual official, board, commission, or other governmental body that has the legal authority to appoint, hire, or contract for the services of the public employee, or such authority's designee. A disclosure to an appointing authority that is a multi-member body shall be made to the chairperson or designee, and copied to the members of the body. Such multi-member body may, by valid vote of such body, choose to delegate to the chairperson or designee the authority to make any necessary determination in response to such disclosure on behalf of such body, which should then be copied to the members. Judges and judicial branch employees make the disclosure required by 930 CMR 6.00 to the Chief Justice of their respective courts, or to his or her designee.
  - (b) An elected state or county public employee makes a disclosure to the Commission. Members of the General Court may make a disclosure to the Senate or House Clerk or to the Commission.
  - (c) An elected municipal employee makes a disclosure to the town or city clerk, and an elected regional school committee employee makes a disclosure to the clerk or secretary of such committee.

## **6.02: Exemptions to Encourage Volunteer Public Service, and to Promote Education, Training, and Professional Development**

### **(1) Purpose.**

The purpose of 930 CMR 6.02 is to encourage volunteer public service, and to promote education, training, and professional development, by:

- (a) permitting public employees, and persons with existing direct or indirect financial interests in public contracts, to serve in uncompensated positions with public agencies, without violating M.G.L. c. 268A, §§ 7, 14, or 20;
- (b) permitting persons with compensated non-public positions to receive their usual compensation during the time spent serving in uncompensated positions with public agencies, without violating M.G.L. c. 268A, §§ 4(a), 11(a), or 17(a);
- (c) permitting persons with compensated public positions to receive their usual compensation during the time spent serving in uncompensated positions as part of the State Employees Responding as Volunteers (SERV) Program, or in any other public agency program to promote volunteer services by public employees with guidelines comparable to those of the SERV Program, without violating M.G.L. c. 268A, §§ 4(a), 11(a), or 17(a); and
- (d) permitting persons who serve in uncompensated intern positions to accept compensation from other sources for time spent in such service.

### **(2) Definitions.**

For purposes of the exemptions created by 930 CMR 6.02:

- (a) An uncompensated position is a position for which no pay, benefits, *per diems*, or retirement-related creditable service is provided. A position is not uncompensated because the person holding it waives compensation. A person holding an uncompensated position may receive reimbursement for actual expenses and the position will still be considered uncompensated.
- (b) To have an indirect financial interest in a contract made by a public agency means to derive financial benefit from a contract between a public agency and another person or entity.
- (c) Usual compensation does not include a severance package, stipend, or other funds received in anticipation of commencing employment.

### **(3) Exemptions.**

- (a) A public employee, or a person with an existing direct or indirect financial interest in a public contract, does not violate M.G.L. c. 268A, §§ 7, 14, or 20 by being elected or appointed to an uncompensated position with a public agency at the same level of government, including such a position with the same agency in which the public employee is serving, provided that the employee makes a disclosure to the employee's original appointing authority upon election or appointment to the uncompensated position. Persons acting within this exemption remain subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, M.G.L. c. 268A, §§ 8A, 15A, and 21A concerning election and appointment by public boards; M.G.L. c. 268A, §§ 6, 13, and 19 concerning self-dealing; and M.G.L. c. 268A, § 23, the standards of conduct.
- (b) A person who has a compensated position or contractual arrangement with a non-public employer may receive his or her usual compensation from the non-public employer during the time spent serving a public agency in an uncompensated position without violating M.G.L. c. 268A, §§ 4(a), 11(a), or 17(a).
- (c) A public employee may receive the employee's usual compensation during the time spent serving in an uncompensated position as part of the SERV Program, or in any other public agency program to promote volunteer services by public employees with guidelines comparable to those of the SERV Program, without violating M.G.L. c. 268A, §§ 4(a), 11(a), or 17(a).

(d) A person who serves in an unpaid intern or similar position in a public agency for educational, training, or professional development purposes may receive compensation, a fellowship, or loan forgiveness from an accredited educational institution or other educational or professional organization during the time spent serving the public agency without violating M.G.L. c. 268A, §§ 4(a), 11(a), or 17(a). An accredited educational institution or other educational or professional organization may provide such compensation, fellowship or loan forgiveness without violating M.G.L. c. 268A, §§ 4(b), 11(b), or 17(b).

## **6.03: Exemption to Permit Public Employees Who Are Parents to Advocate for Their Children**

### **(1) Purpose.**

The purpose of 930 CMR 6.03 is to permit parents or guardians who are public employees to advocate for their children.

### **(2) Definitions.**

For purposes of 930 CMR 6.03:

**Child** includes one's biological child, adopted or pre-adoptive child, foster child, ward, or step-child, provided that the child is under 22 years of age.

**To Advocate** means to act on behalf of a child in one's private capacity as a parent. Advocating does not include discussing financial matters related to one's child with one's subordinates in the absence of other people who would ordinarily participate in accordance with an established decision-making process.

### **(3) Exemption.**

A public employee may advocate for the employee's child or children with school employees and officials and with employees and officials of state agencies overseeing education without violating M.G.L. c. 268A, §§ 4, 11, or 17, provided that the public employee follows established procedures and does not seek special consideration for the child by reason of the employee's public position. A person acting within this exemption remains subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, M.G.L. c. 268A, §§ 6, 13, 19, and 23.

(4) Persons holding supervisory positions with a school, school department, or agency related to education may use this exemption, but must disclose the fact that they have done so. Such a disclosure may omit identifying information to the extent necessary to protect a student's privacy rights as provided by state or federal statute or regulation.

**Example:** A school principal whose child attends the school at which the principal works meets with her child's Individual Education Program team to discuss her child's educational program. The team includes some school employees who are the principal's subordinates. The principal makes a disclosure of the fact that she is attending the meeting to the superintendent of the school district. The principal has acted in accordance with the exemption and has not violated the law.

**Example:** A school committee member whose child attends school in the district participates in a mediation process sponsored by the state Bureau of Special Education Appeals or its successor to resolve issues about who will pay for services for the child. Some of the participants in the mediation are the committee member's subordinates in the school district. The committee member makes a disclosure of his participation in the process. The committee member has acted in accordance with the exemption and has not violated the law.

**Example of What is Not Permitted:** A school committee member meets privately with the superintendent of schools, who is the committee member's subordinate, to arrive at financial terms with respect to payment for services for the committee member's child. Ordinarily, other school department members including the Director of Special Education Services would participate in such discussions. The committee member makes no disclosure of the meetings. The committee member has violated the law.

## **6.04: Exemption for Volunteer Medical or Rescue Organizations in Exigent Circumstances**

### **(1) Purpose.**

The purpose of 930 CMR 6.04 is to allow public employees to act on behalf of volunteer medical or rescue organizations such as the American Red Cross in the event of exigent circumstances.

### **(2) Definition.**

For purposes of 930 CMR 6.04, exigent circumstances are urgent situations requiring immediate action, such as may arise during wars, riots, terrorist actions, civil disorder, floods, storms, blizzards, hurricanes, tornadoes, tsunamis, volcanoes, epidemics, famines, fires, earthquakes, oil spills, shipwrecks, airplanes crashes, and building collapses.

### **(3) Exemption.**

A public employee may act as an agent for a volunteer medical or rescue organization such as the American Red Cross in exigent circumstances without violating M.G.L. c. 268A, §§ 4, 11, or 17.

## **6.05: Exemption for Certain Payments by the Department of Children and Families**

### **(1) Purpose.**

The purpose of 930 CMR 6.05 is to allow state employees to serve as foster parents, guardians, pre-adoptive and adoptive parents, or in any other comparable capacity.

### **(2) Exemption.**

A state employee may have a direct or indirect financial interest in a contract or agreement with the Department of Children and Families to serve as a foster parent, guardian, pre-adoptive or adoptive parent, or in any comparable status, including, but not limited to, the receipt of payments directly or indirectly from the Department of Children and Families, without violating M.G.L. c. 268A, §§ 4 or 7; provided that:

- (a) the state employee has been approved by the Department of Children and Families or its designee to serve as a foster parent, guardian, pre-adoptive or adoptive parent, or in any comparable status; and
- (b) the state employee files with the Commission a disclosure of the financial interest on a form designated for such purpose by the Commission.

## **6.06: Exemption to Permit State Employees to Provide Services to the Massachusetts Committee for Public Counsel Services**

### **(1) Purpose.**

The purpose of 930 CMR 6.06 is to permit state employees to provide services to persons entitled to receive representation and/or services from the Massachusetts Committee for Public Counsel Services (CPCS), and to provide services to the attorneys assigned by CPCS to represent those persons.

### **(2) Exemption.**

A state employee may have a direct or indirect financial interest in a contract or agreement to provide services to, or on behalf of, persons, in connection with matters in which those persons are receiving representation and/or services from CPCS, or attorneys or personnel assigned by CPCS, and may act as an agent in relation to so doing, without violating M.G.L. c. 268A, §§ 4 or 7; provided that the state employee

files a disclosure of the financial interest with the Commission on a form designated for such purpose by the Commission. The disclosure must show written approval of the proposed arrangement by CPCS and by the state employee's appointing authority or designee, if different from CPCS, in advance of providing the services.

**Example:** A psychiatrist employed by the Department of Mental Health may enter into a contract to be paid to carry out an evaluation of a defendant in a criminal case who is represented by a public defender assigned by CPCS, and to testify concerning her evaluation, provided that, before doing so, she discloses her financial interest in writing and obtains DMH approval of the arrangement, and files the written disclosure with the Commission.

## **6.07: Exemption to Permit State Employees to Provide Personal Services to State Agency Clients**

### **(1) Purpose.**

The purpose of 930 CMR 6.07 is to increase the availability of providers of personal services to clients of state human or social services agencies, and of educational services to those who serve such agencies, by permitting state employees to provide such services.

### **(2) Definition.**

For purposes of 930 CMR 6.07, personal services means any service related to the health or welfare of a client of a state human or social services agency that is provided by a state employee, including services provided in an institutional setting, or in a group, community, home, or other non-institutional setting.

### **(3) Exemption.**

A state employee may, without violating M.G.L. c 268A, §§ 4 or 7, have a direct or indirect financial interest in a contract or agreement, and may act as an agent in relation to any such contract or agreement:

(a) made by a state agency to provide personal services to a person or persons who receive services from, or have services paid for by, state agencies within the Executive Office of Health and Human Services, the Executive Office of Public Safety and Security, the Executive Office of Elder Affairs, the Executive Office of Veterans' Services, the Human Service Transportation Office, and any sheriff's office, or educational services to those who work for such agencies, or

(b) made by a provider or organization funded by any agency within the aforesaid offices for the aforesaid purposes, provided that the state employee files a disclosure of the financial interest with the Commission on a form designated for such purpose by the Commission. The form must show written approval of the proposed arrangement by the employee's appointing authority or designee and, if different, by the contracting state agency, in advance of providing the personal or educational services.

**Example:** An employee of the Department of Developmental Services may enter into a contract to be paid to provide weekend respite services that will be paid for by the Department of Mental Health, provided that the employee files a written disclosure of the arrangement and that both the Department of Developmental Services and the Department of Mental Health have approved the arrangement.

## **6.08: Exemption for Board Members Appointed by Public Agency**

### **(1) Purpose.**

The purpose of 930 CMR 6.08 is to allow a non-elected public employee appointed to the board of a nonprofit public interest organization by the employee's employing public agency, to serve as the employing public agency's representative on such board, and to participate fully in board matters and in agency matters.

## **(2) Exemption.**

A non-elected public employee who has been appointed to the board of a nonprofit public interest organization by the employee's employing public agency may participate in particular matters in which the organization has a financial interest without violating M.G.L. c. 268A, §§ 6, 13, 19, or 23.

## **6.09: Exemption for School Committee Members and Charter School Trustees**

### **(1) Purpose.**

The purpose of 930 CMR 6.09 is to permit school committee members and charter school trustees to participate in certain circumstances in matters that may affect their own children.

### **(2) Definitions.**

For purposes of 930 CMR 6.09:

(a) A general school fee means a fee, waiver or exemption established by a school committee or charter school board of trustees for a school service, program, or activity, including, but not limited to, fees for full day kindergarten, school bus transportation, preschool or after school programs, sports, or extracurricular activities. The term general school fee does not include a fee that applies to a single event or the children of a single family.

(b) Child includes one's biological child, adopted or pre-adoptive child, foster child, ward, and step-child.

### **(3) Exemption.**

A school committee member or charter school trustee may participate in a particular matter involving a general school fee that will affect a child of the committee member or trustee without violating M.G.L. c. 268A, §§ 6, 13, 19, or 23, if the trustee or committee member first files a disclosure of the financial interest with the Commission (trustee) or with the city or town clerk (committee member).

## **6.10: Exemption to Permit the Conveyance of Fee Interests, Restrictions, and Easements by Public Employees**

### **(1) Purpose.**

The purpose of 930 CMR 6.10 is to permit public employees to sell, transfer, or convey fee interests, easements, conservation restrictions, preservation restrictions, agricultural preservation restrictions, watershed preservation restrictions, and affordable housing restrictions to state, county, and municipal agencies.

### **(2) Exemption.**

A public employee may have a direct or indirect financial interest in a contract or agreement to convey any fee interest, easement, or restriction listed in M.G.L. c. 184, § 31 to a state, county, or municipal agency, including, but not limited to, situations where such an agency is administering a federally-funded program, without violating M.G.L. c. 268A, §§ 7, 14, or 20; provided that:

(a) the public employee does not participate in or have official responsibility for the agency's process of recommending or selecting properties on which to acquire such fee interests, easements, or restrictions, or for decision-making with respect to such recommendation and selection; and

(b) the public employee files a disclosure of the financial interest with the Commission (state and county employees) or with the city or town clerk (municipal employees) prior to entering into such contract or agreement. This disclosure does not take the place of any disclosure required by M.G.L. c. 7, § 40J.

## **6.11: Exemption to Allow Public Employees to Hold Additional Jobs on Premises Occupied Pursuant to Contract or Agreement With Public Agencies**

### **(1) Purpose.**

The purpose of 930 CMR 6.11 is to permit a public employee to hold an additional paid position with a second employer, where the only impediment to such employment arises because the second employer occupies premises pursuant to a contract or agreement with the public agency that employs the public employee, or any other public agency at the same level of government.

### **(2) Exemption.**

A public employee is not prohibited by M.G.L. c. 268A, §§ 7, 14, or 20 from receiving compensation from employment, or from a contractual arrangement with an employer or contracting entity, because that employer or entity occupies premises pursuant to a contract or agreement with a public agency at the same level of government as the public employee's agency; provided, that the public employee does not participate in or have official responsibility for the public agency's process for recommending or selecting properties that will be subject to such contracts or agreements, or for decision-making with respect to such recommendation and selection, or any property management responsibilities with respect to such properties. A person acting within this exemption remains subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, §§ 4, 6, 11, 13, 17, 19, and 23.

**Example:** A mechanic employed by the Massachusetts Department of Transportation may have a second job at a fast-food restaurant located at a state-owned rest stop on the Massachusetts Turnpike. The second job is consistent with the exemption because, in his state job, the mechanic does not participate in, and would not have official responsibility for, negotiating the terms of the restaurant's contractual arrangement with the Turnpike.

## **6.12: Exemption to Permit Public Employees to Participate in Mitigation, Disaster Relief, and Renewable Energy Programs**

### **(1) Purpose.**

The purpose of 930 CMR 6.12 is to permit public employees to participate in mitigation, disaster relief, and renewable energy programs administered by their agencies.

### **(2) Definition.**

For purposes of 930 CMR 6.12, a public agency mitigation program is one designed to mitigate the effects of the public agency's projects and activities on the surrounding community.

### **(3) Exemption.**

A public employee may participate in, and receive the benefits of, any public agency mitigation program, any public agency disaster relief program (including, but not limited to, the Red Tide Relief program), and any renewable energy or energy efficiency program to the extent that the employee is otherwise eligible for the

program, without violating M.G.L. c. 268A, §§ 7, 14, or 20; provided that the employee does not participate in or have official responsibility for the administration of such program or decision-making with respect to the award of benefits or relief under such program.

### **6.13: Exemptions to Permit Public Agencies to Contract With Attorneys and Other Consultants of Choice**

#### **(1) Purpose.**

The purpose of 930 CMR 6.13 is to make it easier for public agencies to contract with attorneys and other consultants of choice, and to broaden the pool of attorneys and consultants available to provide services to public agencies.

#### **(2) Definition.**

For purposes of 930 CMR 6.13, a legitimate public purpose means that the public will obtain an identifiable advantage from the use of the particular person's services under an additional contract.

#### **(3) Exemption for Current Public Employees.**

A person who is a special public employee by reason of performing contracted legal or other professional services for a public agency may have a financial interest in a contract or contracts made by the agency in which he is serving (additional contract), without violating M.G.L. c. 268A, §§ 4, 7, 11, 14, 17, or 20; provided that the employee:

- (a) did not participate in or have official responsibility for the contents, design, making, or award of the additional contract, and
- (b) either the additional contract was awarded as the result of a competitive selection process in accordance with applicable law or agency policy, or, consistent with applicable public procurement law and agency policy, the agency head certifies in writing that a legitimate public purpose will be served by permitting the additional contract and provides a sole source justification for that contract, and
- (c) the person files with the Commission (state and county employees) or the city or town clerk (municipal employees) a disclosure of the nature of services provided to the agency and the employee's financial interest, which includes facts to show compliance with 930 CMR 6.13(3)(a) and (b).

#### **(4) Exemption for Special Assistant Attorneys General.**

An attorney who is a special state employee by reason of performing services as a special assistant attorney general may directly or indirectly receive or request compensation from, or act as agent or attorney for, a party other than the commonwealth or a state agency, in prosecuting a claim against the Commonwealth or a state agency, or in relation to a particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest, without violating M.G.L. c. 268A, § 4(a) or (c) or § 7, provided that such attorney complies in every respect with the provisions of the Massachusetts Rules of Professional Conduct.

#### **(5) Exemption for Former Public Employees.**

A former special public employee who performed contracted professional services for a public agency may continue to provide such services for a different public agency without violating M.G.L. c. 268A, §§ 5, 12, or 18, if the first agency assigns the contract to the second agency.

## **6.14: Exemption of Affordable Housing Programs and Community Development Programs**

### **(1) Purpose.**

The purpose of 930 CMR 6.14 is to clarify the exemption for housing subsidy programs contained in M.G.L. c. 268A, § 20(g) and (h), by specifying that the statutory language of those sections applies to various types of programs.

### **(2) Exemption.**

For purposes of the exemptions created by M.G.L. c. 268A, § 20(g) and (h), housing subsidy program administered by a local housing authority and rental subsidy administered by a local housing authority shall include affordable housing programs and community development programs administered by local housing authorities and municipal agencies, subject to the limitation contained in M.G.L. c. 268A, § 20(g) and (h) that a public employee with responsibility for the administration of such programs is not eligible for the exemption.

## **6.15: Exemption of Eminent Domain Settlements**

### **(1) Purpose.**

The purpose of 930 CMR 6.15 is to allow negotiated settlements in eminent domain matters.

### **(2) Exemption.**

A public employee may enter into, and receive payment pursuant to, a negotiated settlement agreement with the public agency that employs the public employee, or a public agency at the same level of government that employs the public employee, in an eminent domain matter, without violating M.G.L. c. 268A, §§ 7, 14, or 20. Persons acting within this exemption remain subject to the other prohibitions of M.G.L. c. 268A, including §§ 4, 6, 11, 13, 17, and 19.

## **6.16: Exemption of Fee-based Contractual Relationships Readily Available to the Public**

### **(1) Purpose.**

The purpose of 930 CMR 6.16 is to allow public employees to enter into fee-based contractual relationships readily available to the public.

### **(2) Exemption.**

A public employee may enter into, and receive the benefits of, any fee-based contractual relationship with the public agency that employs the public employee, or with a public agency at the same level of government that employs the public agency, provided that the fee-based contractual relationship is readily available at a set price to the public at large, without violating M.G.L. c. 268A, §§ 7, 14, or 20. Persons acting within this exemption remain subject to the other prohibitions of M.G.L. c. 268A, including §§ 6, 13, and 19.

**Example:** A state employee may purchase an MBTA pass.

**Example:** A municipal employee may pay to send a child to a summer camp run by the municipal recreation department.

**Example:** A municipal employee may become a paid member at a municipal golf course.

**Example:** Where a regional vocational high school trains students to perform auto repairs in part by running a program whereby students provide oil changes and other services to members of the public for a set fee payable to the school, a teacher at the school can have his oil changed by the students as part of that program as long as those services are readily available to the public and the teacher pays the applicable fee.

**Example:** An employee of the Massachusetts Port Authority may purchase a ticket from an airline operating out of a facility owned by that agency.

## **6.17: Exemption Related to Senior Tax Abatement Programs**

### **(1) Purpose.**

The purpose of 930 CMR 6.17 is to allow participants in senior tax abatement programs to hold additional municipal positions and to have financial interests in municipal contracts, and *vice versa*.

### **(2) Exemption.**

A participant in a senior tax abatement program may hold additional municipal positions and have financial interests in municipal contracts without violating M.G.L. c. 268A, § 20, provided that the employee does not participate in or have official responsibility for the administration of such program or decision-making with respect to the award of benefits or relief under such program.

## **6.18: Census Employment**

### **(1) Purpose.**

The purpose of 930 CMR 6.18 is to allow public employees to hold additional paid positions with the federal census.

### **(2) Exemption.**

A public employee may hold a paid position with the federal census without violating M.G.L. c. 268A, §§ 4, 11, and 17.

## **6.19: Exemption Permitting Public Employees to Purchase or Rent Housing and Parking Units in Multi-unit Buildings Subject to Contractual Arrangements With Public Agencies, When Such Transactions Are Readily Available to the General Public**

### **(1) Purpose.**

The purpose of 930 CMR 6.19 is to allow public employees to purchase or rent housing and parking units in multi-unit buildings that are subject to long-term leases or other contractual arrangements with public agencies, including their own, when the opportunity to enter into such arrangements is readily available to the general public, and the public employee was not involved in creating the opportunity.

## **(2) Exemption.**

A public employee may purchase or rent a housing and/or parking unit in a multi-unit building that is subject to a long-term lease or other contractual arrangement with a public agency, including his or her own public agency, without violating M.G.L. c. 268A, §§ 7, 14, or 20, provided that the following conditions are met:

(a) The public employee did not participate in or have official responsibility for: the negotiation or approval of the long-term lease or contractual arrangement with the public agency; any other aspect of the public agency action that led to the availability of the purchase or lease opportunity; or administration of any program related to the lease or contractual arrangement; and

(b) The purchase or lease opportunity is available to members of the general public on the same terms that it is available to the public employee, and steps have been taken to make the general public aware of the availability of the opportunity.

## **(3) Persons acting within this exemption remain subject to the other prohibitions of M.G.L. c. 268A, including §§ 6, 13, 19, and 23.**

Example: A state agency enters into an agreement with private developers to develop condominiums or rental units on land owned by the agency. Included in the agreement are provisions for payments to be made by the developer to the agency based on occupancy, sale, and resale of the units; in addition, the public agency receives a payment from a unit owner at the time of the sale of a unit. An employee of the agency who had no involvement in negotiating, reviewing, or approving the agreement with the developers, or in managing the property, may purchase a condominium in the building.

## **6.20: Exemption Permitting Town Clerks to Perform Certain Election-related Functions**

### **(1) Purpose.**

The purpose of 930 CMR 6.20 is to permit town clerks to perform election-related functions that town clerks are statutorily required to perform, and functions that are not likely to be outcome-determinative, as follows:

- (a) During elections in which the town clerk is a candidate for any office or offices, and
- (b) In towns in which the clerk is appointed, during elections in years in which the town clerk's term expires, and the person or persons who appoint the clerk are candidates for any office or offices.

The basis for this exemption is the unique role played by town clerks relating to elections, and the existing extensive regulation of their functions in state election law.

### **(2) Exemption.**

(a) A town clerk may perform the election-related functions that he or she is statutorily required to perform under M.G.L. chs. 51, 53, 54, 55, 55B, and 233, either in his or her capacity as a clerk, or as a member of a board of registrars of voters, without violating M.G.L. c. 268A, § 19, notwithstanding that:

1. The clerk is a candidate for an office or offices in that election; or
2. In towns in which the clerk is appointed, and during elections in years in which the town clerk's term expires, the person or persons who appoint the clerk are candidates for any office.

(b) This exemption as it relates to action by the clerk as a member of the board of registrars of voters applies only when the clerk acts with other members of said board, and does not apply in situations where the board of registrars has delegated its duties to the clerk. Town clerks acting under this exemption remain subject to all other restrictions of M.G.L. c. 268A, including §§ 17, 20, and 23.

**Examples:** A town clerk who is a candidate for an office or offices may: make determinations with respect to provisional voters as required by M.G.L. c. 54, § 76C; assist a voter who will be absent on the day of the election in completing a ballot as required by M.G.L. c. 54, § 91; receive and enter election results as required by M.G.L. c. 54, §§ 105 and 105A; process absent voting ballots as required by M.G.L. c. 54, §§ 94 and 95; and receive objections to certificates of nomination, nomination papers, and withdrawals as required by M.G.L. c. 55B, § 7. An appointed clerk whose appointing authority is a candidate for an office or offices may act as stated in this example. This list is not intended to be exclusive.

**Examples:** A town clerk, acting as a member of a board of registrars pursuant to M.G.L. c. 51, § 15, may: perform the duties with respect to absent voting ballot applications required by M.G.L. c. 54, § 91; perform the duties with respect to voter registration required by M.G.L. c. 51, §§ 36 through 47; and perform the duties with respect to nomination papers required by M.G.L. c. 53, § 61. An appointed clerk whose appointing authority is a candidate for an office or offices may act as stated in this example. This list is not intended to be exclusive.

**Example of What is Not Permitted:** A town clerk who is a member of the board of registrars of voters, and who is a candidate for an office or offices, or whose appointing authority is a candidate for office and it is during the year in which the clerk's term expires, may not, acting by herself and without the participation of other members of the board of registrars of voters, check her own or her adversary's nomination papers or those of her appointing authority and their adversaries, or certify the number of names on her own nomination papers or her adversary's or those of her appointing authority or their adversaries, as required by M.G.L. c. 53, § 7, because state law requires participation by the full board. This list is not intended to be exclusive.

(c) A town clerk who is a candidate for an office or offices may perform election-related functions that are not required by statute, but that are typically assigned to or performed by the clerk, if such functions are not likely to be determinative of the outcome of the election.

**Example:** A town clerk who is a candidate for an office or offices, or whose appointing authority is a candidate for office and it is during the year in which the clerk's term expires, may perform duties with respect to marking shelves and guard rails in a polling place, which are delegated to her by the Select Board, since such tasks are not likely to be determinative of the outcome of the election. This list is not intended to be exclusive.

## 6.21: Alphabetical Index to Exemptions Unrelated to Gifts

Topic	Regulatory Section	Pages
Adoptive or Pre-adoptive Parent	<a href="#">930 CMR 6.05</a>	<a href="#">40</a>
Affordable Housing Programs	<a href="#">930 CMR 6.14</a>	<a href="#">44</a>
Agricultural Preservation Restriction	<a href="#">930 CMR 6.10</a>	<a href="#">42</a>
Board Member	<a href="#">930 CMR 6.02</a> , <a href="#">6.08</a>	<a href="#">38</a> , <a href="#">42</a>
Census Employment	<a href="#">930 CMR 6.18</a>	<a href="#">45</a>
Charter School Trustees	<a href="#">930 CMR 6.09</a>	<a href="#">42</a>
Child, Act on Behalf of	<a href="#">930 CMR 6.03</a>	<a href="#">39</a>
Commission	<a href="#">930 CMR 6.01(1)</a>	<a href="#">37</a>
Committee for Public Counsel Services	<a href="#">930 CMR 6.06</a>	<a href="#">40</a>

Community Development Programs	<a href="#">930 CMR 6.14</a>	<a href="#">44</a>
Conservation Restriction or Easement	<a href="#">930 CMR 6.10</a>	<a href="#">42</a>
Consultants	<a href="#">930 CMR 6.13</a>	<a href="#">43</a>
Department of Children and Families	<a href="#">930 CMR 6.05</a>	<a href="#">40</a>
Disaster Relief Program	<a href="#">930 CMR 6.12</a>	<a href="#">43</a>
Disclosure	<a href="#">930 CMR 6.01(6)</a>	<a href="#">38</a>
Eminent Domain	<a href="#">930 CMR 6.15</a>	<a href="#">44</a>
Exigent Circumstances	<a href="#">930 CMR 6.04</a>	<a href="#">40</a>
Fee-based Contractual Relationships	<a href="#">930 CMR 6.16</a>	<a href="#">45</a>
Foster Parents	<a href="#">930 CMR 6.05</a>	<a href="#">40</a>
Guardian	<a href="#">930 CMR 6.05</a>	<a href="#">40</a>
Human Services Agencies, Clients of	<a href="#">930 CMR 6.07</a>	<a href="#">40</a>
Indirect Financial Interest	<a href="#">930 CMR 6.02(2)(b)</a>	<a href="#">38</a>
Interns	<a href="#">930 CMR 6.02(3)(d)</a>	<a href="#">39</a>
Leased Premises, from Public Agency	<a href="#">930 CMR 6.11</a>	<a href="#">43</a>
Mitigation Program	<a href="#">930 CMR 6.12</a>	<a href="#">43</a>
Parents	<a href="#">930 CMR 6.03, 6.05, 6.09</a>	<a href="#">39, 40, 42</a>
Personal Services	<a href="#">930 CMR 6.07</a>	<a href="#">40</a>
Public Employee	<a href="#">930 CMR 6.01(3)</a>	<a href="#">37</a>
Red Cross	<a href="#">930 CMR 6.04</a>	<a href="#">40</a>
Red Tide Relief Program	<a href="#">930 CMR 6.12</a>	<a href="#">43</a>
Renewable Energy Program	<a href="#">930 CMR 6.12</a>	<a href="#">43</a>
Rented Premises, from Public Agency	<a href="#">930 CMR 6.11</a>	<a href="#">43</a>
Rescue Organization	<a href="#">930 CMR 6.04</a>	<a href="#">40</a>
School Committee Member	<a href="#">930 CMR 6.03, 6.09</a>	<a href="#">39, 42</a>
Senior Tax Abatement Programs	<a href="#">930 CMR 6.17</a>	<a href="#">45</a>
Social Services Agencies	<a href="#">930 CMR 6.07</a>	<a href="#">40</a>

Town Clerks	<a href="#">930 CMR 6.20</a>	<a href="#">46</a>
Uncompensated Position	<a href="#">930 CMR 6.02(2)(a)</a>	<a href="#">38</a>

Topic	Regulatory Section	Pages
Usual Compensation	<a href="#">930 CMR 6.02(2)(c)</a>	<a href="#">38</a>
Volunteer	<a href="#">930 CMR 6.02</a>	<a href="#">38</a>
Volunteer Medical Organization	<a href="#">930 CMR 6.04</a>	<a href="#">40</a>

*REGULATORY AUTHORITY: 930 CMR 6.00: M.G.L. c. 268B, § 3(a)(2).*

## 930 CMR 7.00: DEFINITION OF GOVERNMENTAL BODY

For purposes of M.G.L. c. 268A, § 5(e), the phrase, governmental body as determined by the state ethics commission with which he has been associated, means:

- (a) a state agency, authority, board, bureau, commission, council, department, division or other entity, including the general court and the courts of the commonwealth, for which a former state employee performed services, or in which a former state employee held an office, position, employment, or membership (first governmental body), at any time during the year prior to leaving state government;
- (b) any other governmental body or bodies located organizationally within the first governmental body; and
- (c) the employees of the first governmental body and every governmental body within it. For purposes of 930 CMR 7.00, located organizationally does not include any independent agency and authority that is placed within an executive office by the agency or authority's enabling act, but is not subject to the jurisdiction of such executive office.

**Example:** for a former state legislator or legislative employee, the governmental body with which he was associated is the General Court of the Commonwealth of Massachusetts (both branches) and their Members and employees.

**Example:** for a former Governor or employee of the Governor's office, the governmental body with which she was associated is the Governor's office and its employees and the Governor, but not other Executive Offices or agencies.

**Example:** for a former employee of an Executive Office, the governmental body with which he was associated is the Executive Office by which he was employed, all divisions and departments of that Executive Office, all state agencies within that Executive Office, and the employees of that office and those divisions, departments, and agencies, but not the Governor, the Governor's office, other Executive Offices, or their agencies.

**Example:** for a former employee of a state agency, the governmental body with which she was associated is that state agency, any governmental bodies located organizationally within that agency, and the employees of that agency, but not the Governor or the Governor's office, other state agencies within the same Executive Office as the former employing agency, or other executive branch agencies.

**Example:** for a former employee of an independent state authority that is placed within an executive office, but not subject to supervision or control by that executive office, the governmental body with which he was associated is the independent state agency, but not the executive office.

*REGULATORY AUTHORITY: 930 CMR 7.00: M.G.L. c. 268A, § 5(e) and c. 268B, § 3(a)(2).*

