

FREDERICK COUNTY ETHICS COMMISSION

FREDERICK COUNTY, MARYLAND

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FREDERICK COUNTY ETHICS COMMISSION

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REGULATION 12-01

POST-EMPLOYMENT LIMITATIONS AND RESTRICTIONS UNDER § 1-7.1-5(E)(1) OF THE FREDERICK COUNTY ETHICS ORDINANCE

Section 1. Purpose of this Regulation

This Regulation is intended to alert Frederick County officials and employees to issues that can arise under § 1-7.1-5(E)(1) after they leave County service and to provide general guidance as to how this Section will be applied. Officials and employees who have more specific questions or concerns about application of this provision are encouraged to contact the Ethics Commission and seek an Advisory Opinion that will provide more specific guidance and direction.

Section 2. Ethics Ordinance provision

Section 1-7.1-5(E)(1) of the County's Ethics Ordinance states as follows:

A former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee.

Section 3. Reasons for the restriction on post-employment

The intended purposes of the restriction in § 1.7.1-5(E)(1) are the following:

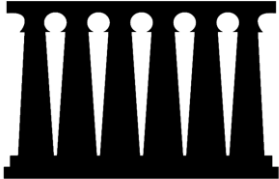
A. To avoid the appearance of "switching sides" and thereby providing another party the special knowledge acquired in the context of one's County employment; and

B. Preventing the use of prior involvement to benefit the employee or another.

Section 4. Guidance on the application of § 1-7.1-5(E)(1)

Advice with regard to post-employment issues depends on the specific facts. In order to determine whether § 1-7.1-5(E)(1) applies in any given situation, specific facts will be required to ascertain (1) whether the matter is the same "case, contract, or other

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specific matter” involving the County and (2) whether the person’s participation in that matter while a County official or employee reaches the level of significant participation. In an effort to provide general guidance, however, the Ethics Commission adopts the following principles:

A. Section 1-7.1-5(E)(1) of the Ethics Ordinance does not totally prohibit employment with a new employer involved in matters relating to the official’s or employee’s former division, department, office, board or commission or an individual’s appearance before that entity. Instead, it is necessary to identify particular matters in which the individual had significant involvement in the context of his or her County employment. Assistance or participation as to those matters on behalf of a party other than the County is prohibited.

B. Participation in a matter as a County official or employee includes more than theoretical final authority or responsibility for a matter. Facts demonstrating personal supervision in a matter as a County official or employee of the work of others, involvement in a required sign-off or concurrence capacity, or, in some cases, the provision of advice or recommendations as to a matter, may lead to a conclusion of significant participation. If the proposed new work has any relationship to the individual’s former County activities, the question the individual needs to consider is whether the proposed work for a new employer involves the same matter in which the individual participated as a County official or employee.

C. While there is no time limit on the prohibition in § Section 1-7.1-5(E)(1), the time elapsed since the work was performed as a County official or employee and since the termination of County employment is a factor, although not the determinative factor or the only factor. If a potential assignment for a new employer involves a matter that flows from or is otherwise related to a matter on which the individual worked while a County official or employee, the individual should consult with the Ethics Commission for a more detailed review in the context of the specific facts. In terms of how much work a former employee must perform for the new employer to constitute “assisting” for purposes of the prohibition in § 1-7.1-5(E)(1), it is best to consult with the Commission concerning the specific facts of the situation.

D. The Ethics Ordinance does not prohibit former officials and employees who leave County service from working directly for the County as contractual employees (i.e. personal services contract) on the same matter they worked on during their County service. On the other hand, the Ethics Ordinance does prohibit former officials and employees from working on these same matters if they attempt to do so by forming a sole proprietorship or by working for a contracting business. The distinction here is that as a direct contractor, the former official/employee is still working directly for the County, is not assisting or representing another party for compensation, and therefore has not “switched sides.” In the latter situation (sole

proprietorship or employed by a contractor) the insertion of a business entity into the relationship creates a conflict in that the former official/employee has a primary duty to his/her new employer rather than the County.

10 September 2012
Date

/s/
Hayden B. Duke, Chairman

/s/
Paula Carolyn Bell, Member

/s/
Philip A. Dacey, Member

Jesse Goode, Jr., Member

/s/
Harold Otis, Member

/s/
E. Donald Foster
Alternate Commission Member