

FREDERICK COUNTY GOVERNMENT

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County Executive

FREDERICK COUNTY ETHICS COMMISSION

STANDARD OPERATING PROCEDURES

Revised: May 2024

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FREDERICK COUNTY ETHICS COMMISSION STANDARD OPERATING PROCEDURES

I. Background

The purpose of these standard operating procedures is to set forth the procedures under which the Frederick County Ethics Commission will fulfill its duties under the Ethics Law.

The Frederick County Ethics Commission was established in 1982, when the first Frederick County Ethics Law was enacted. The current Ethics Law is located in Chapter 1-7.1 of the Frederick County Code.

The Ethics Law may also be found on the County's website at <https://frederickcountymd.gov/DocumentCenter/View/1618/Ethics-Law>.

The Commission is made up of seven members and an alternate, all of whom are appointed by the County Executive (after being interviewed and recommended by an independent nominating committee) for three-year staggered terms, subject to confirmation by the County Council.¹ Members may not serve more than two (2) full consecutive three-year terms. The Commission elects its own chairman.

Except as provided in Section V.F.4., the Commission will decide all matters by a majority vote. If one of the members is absent or does not participate in the matter before the Commission, the alternate will vote in the member's place.

II. Commission Responsibilities

The Ethics Law gives the Ethics Commission the following responsibilities:

- A. To devise, receive and maintain all forms required by the Ethics Law.
- B. To develop procedures and policies for advisory opinion requests, including the reconsideration of advisory opinions, and provide published advisory opinions to persons subject to the Ethics Law as to the applicability of the Law to them.
- C. To develop procedures and policies for the processing of complaints and to make determinations regarding complaints filed by any person alleging violation of the Ethics Law.
- D. To conduct a public information program regarding the purposes and application of the Ethics Law, including the issuance of advisories about the Ethics Law or these procedures.
- E. To review and maintain the registrations and reports filed under the lobbying provisions of the Ethics Law and notify persons engaging in lobbying activities of any omissions or deficiencies.

¹ Vacancies for unexpired terms may be filled by the County Executive without referral to the independent nominating committee.

- F. To compute and issue an annual report of compensation and spending in connection to lobbying activity by registered lobbyists.
- G. To certify by October 1 of each year to the State Ethics Commission that the County is in compliance with the requirements of State law for local elected officials.
- H. To make recommendations for changes to the Ethics Law when needed in order to comply with the State Ethics Law.
- I. To request funds for outside counsel and other services, as required.
- J. To approve spending budgeted funds upon approval by a majority vote of the Commission.

III. County Attorney's Office Responsibilities

Pursuant to the Ethics Law, the County Attorney shall advise the Commission. The County Attorney shall appoint an attorney to serve as the Commission's legal adviser.

The Office of the County Attorney also acts as staff to the Commission. In such capacity, the Office serves as the repository for the Commission's records and files, distributes, and collects financial disclosure forms, prepares minutes of the Commission's meetings, maintains the Commission's web site, and conducts such investigations and preliminary inquiries as may be requested by the Commission.

The County Attorney shall advise the Commission when outside counsel or other services are needed.

IV. Regulations

The Commission is authorized to issue regulations. Any regulations adopted by the Commission shall be posted on the Commission's website and attached to these Standard Operating Procedures in Appendix "B" hereto.

V. Requests for Advisory Opinions or Exemptions

Policy

The Ethics Commission issues Advisory Opinions to individuals subject to the Ethics Law in order to provide guidance on compliance with the requirements of the Law. Requesting an Advisory Opinion helps a person to determine whether a contemplated action would violate the Ethics Law or create the perception of a violation. Advisory Opinions are issued in advance of the action and provide guidance on how to comply with the Ethics Law.

Note: This differs from a Commission decision on a complaint, which looks at conduct that has already occurred and determines whether there has been a violation of the Ethics Law.

An Advisory Opinion is intended to serve as a guide to the persons immediately affected, as well as to others who may face similar questions in the future. The Ethics Commission also may issue Advisory Opinions as an alternative to formal enforcement action, though not in response to a complaint. (The enforcement options available to the Ethics Commission are found in §1-7.1-10 of the Ethics Law.)

As an alternative to issuing a new opinion in response to a request, the Commission may – when a request presents facts and raises issues that have been addressed in a previously issued Advisory Opinion – transmit the prior Advisory Opinion as an expedited informal response to the request.

Procedures

A. Filing a Request

1. Requests must be made in writing, by e-mail or by online form approved by the Commission. The request should contain the person's name, signature, home address, e-mail address, preferred telephone number, and a statement of the facts and circumstances giving rise to the request.
2. A request for an advisory opinion may be mailed or delivered to the County Attorney's Office on behalf of the Commission or by e-mail the Commission's e-mail address:
frederick_county_ethics_commission@frederickcountymd.gov .
3. The legal advisor will circulate each request (including requests for reconsideration) to the members of the Commission, including the alternate member. Upon receipt of notice that a request has been received, each Commission member will promptly advise the legal advisor as to whether the request should be discussed at the next Commission meeting. The person making the request or other persons with information material to the request may be invited to meet with the Commission, at the Commission's discretion.
 - a. With respect to requests relating to outside employment, if no member indicates that the request should be discussed at the next Commission meeting, the legal advisor shall advise the requester that the Commission does not believe the outside employment creates a conflict of interest or the appearance of a conflict of interest.
4. When the Commission makes a decision on the request, it will issue a written Advisory Opinion to the requester.
5. The name of the person who is the subject of the Advisory Opinion should remain confidential.
6. The Advisory Opinion will also be placed on the Commission's website and included in the Advisory Opinion binder maintained by the Office of the County Attorney.
7. Meetings to discuss the application of the Ethics Law to requests for exemptions and requests for Advisory Opinions will be considered as administrative function meetings under the State Open Meetings Act and, as such, need not be open to the public.
8. Responses to requests should generally be provided within 90 days of receipt of the request. The time for a response to the request may be extended, if necessary.

9. Requests for reconsideration of an Advisory Opinion will only be accepted when the person requesting the reconsideration provides material and substantive new facts or circumstances to support the request.

VI. Complaints

Policy

The Ethics Commission only has the jurisdiction to consider violations of the specific provisions of the Ethics Law and Public Ethics Law. General allegations that conduct is “unethical” cannot be considered unless the conduct would constitute a violation of the law itself.

Once a complaint is filed or initiated by the Commission, the proceedings, meetings, and activities of the Commission and staff in connection with the complaint shall be conducted in a confidential manner. The Commission, its staff, and the parties should not disclose any information relating to the complaint, including the identity of the subject of the complaint or the person making the complaint.

If any matter coming before the Commission presents an apparent conflict of interest on the part of the legal advisor due to the fact that the County Attorney is the attorney for the County Executive and the County Council and is employed by the County Executive, the Commission or the legal advisor must decide whether outside legal counsel is needed. If the Commission believes that an outside attorney is needed to advise the Commission, it will need to employ outside counsel for that matter.

Procedures

A. Filing a Complaint

1. Any person, including the Ethics Commission on its own motion, may file a complaint with the Ethics Commission. Such complaints must:
 - a. Be against an official, employee, or lobbyist under the jurisdiction of the Ethics Commission and allege facts that would support a reasonable person in concluding that a violation of the Ethics Law or Public Ethics Law has occurred.
 - b. Allege a violation of the specific section or sections of the Ethics Law or Public Ethics Law either by:
 - i. Actual activities or decisions that present a conflict of interest.
 - ii. Conduct or relationships that give the appearance of a conflict of interest or improper influence.
 - iii. Conduct that may present a conflict of interest or improper influence.
 - iv. Conduct or relationships that violate the financial disclosure or lobbying provisions of the Ethics Law, including failure to adequately complete forms.
 - v. Conduct that presents a violation of the Public Ethics Law.

- c. Be filed with the Ethics Commission in writing. The written complaint of violation must contain the name of the employee or official and set forth sufficient facts to substantiate the alleged violation. The complaint must specify the specific sections of the law that are alleged to have been violated. The complaint must also contain the name, address, and telephone number of the complainant.
 - d. A complaint must be filed within two (2) years after the date of the alleged violation.
 - e. Be signed and made under oath.
2. Once the Ethics Commission receives or initiates a complaint, it will be recorded in an appropriate confidential log under a unique file number.
 3. A complaint that fails to comply with these requirements will not be considered. In addition, the Ethics Commission may at any time dismiss a complaint if the Commission determines that it lacks jurisdiction or insufficient evidence is provided, and that no further action is warranted.
 4. If a reasonable basis exists for a preliminary inquiry, the Ethics Commission will send written notice to the complainant and the subject of the complaint; provided, however, where a referral for a possible criminal investigation is made before an investigation is started, however, notice will not be given to the subject of the complaint until after the referral is resolved.
 5. If the allegations in the complaint suggest that criminal conduct may have occurred, the Ethics Commission shall refer the matter to the appropriate agency for a determination as to whether a criminal investigation is warranted. Once a referral for possible criminal investigation is made, the Commission will not act on the complaint until the referral is resolved.

Preliminary Inquiry

6. The Ethics Commission, through any member of the Frederick County Attorney's Office, or any attorney or other individual engaged by the Ethics Commission for the purpose of conducting investigations, may conduct a preliminary inquiry.
7. If the complaint does not allege facts sufficient to state a violation of the Ethics Law, the Commission may dismiss the complaint and will notify the complainant in writing. The Commission must inform the complainant of the reason for its decision to dismiss the complaint. The Commission shall inform the subject of the complaint that the complaint was dismissed but shall not disclose the identity of the complainant. If the matter does not qualify for further action, the disposition will be entered in the confidential log.

Formal investigation

8. Complaints that are determined to have enough merit for further action will be investigated.

9. Unless a conflict exists, such as when a complaint is made against an elected official, an investigation must be conducted by a member of the Frederick County Attorney's Office, or any attorney or other individual engaged by the Ethics Commission for the purpose of conducting investigations. The Commission members must not actively participate in any investigations.
10. An investigator acting under the authority of a duly issued subpoena by the Commission (see ____, below) will serve or cause to be served the subpoena and instruct the person to comply with the provisions of the subpoena, which will usually be one or more of the following:
 - a. To respond under oath to written questions within 30 days.
 - b. To produce verified copies of records within 30 days.
 - c. On 15 days' notice, to attend a deposition to answer under oath questions asked by the investigator.

Upon refusal by any person to comply with any subpoena issued by the Commission, the investigator will refer the refusal to the Commission, which shall apply to a court of jurisdiction for a judicial order to comply.

11. After investigation, the results of investigations of complaints will be presented to the Ethics Commission. This report may contain provisions for a resolution of minor infractions, which have been agreed to by the subject of the complaint. The Ethics Commission may accept this resolution and no hearing need be scheduled. Upon resolution, the Ethics Commission will notify the complainant and the subject of the complaint in writing.
12. If the Ethics Commission determines that there is insufficient evidence of a violation of the Ethics Law, the Commission shall issue a written dismissal of the Complaint as set forth below.
13. If the Ethics Commission determines that there is sufficient evidence that a violation of the ethics laws has occurred or is occurring and a resolution is not appropriate, a hearing will be scheduled. The subject of the complaint and the complainant will be notified in writing at least 30 days prior to the hearing date. The preliminary findings of the Ethics Commission will be forwarded to the subject of the complaint and complainant at the same time as notice of the hearing.

B. Hearings

1. The Ethics Commission will conduct hearings. A member shall declare to the Ethics Commission if a personal interest may present a conflict of interest or an appearance of such a conflict. A member who recuses himself or herself from the matter must not be present for any part of the hearing and shall not participate in any discussions or votes on the complaint.
2. The subject of the complaint may request the Commission to issue subpoenas for witnesses and documents to the same extent that a party in litigation in state court would be entitled to a subpoena.

3. All hearings are administrative hearings and are therefore not subject to the strict rules of evidence. Latitude is available to the Ethics Commission in order to determine the true circumstances of the case and arrive at an appropriate conclusion.
4. A hearing is closed to the public. However, the Commission may in its sole discretion open the hearing to the public if the subject of the complaint requests that the hearing be open.
5. Evidence and investigation results will be presented to the Ethics Commission by any member of the Frederick County Attorney's Office, or any attorney or other individual engaged by the Ethics Commission for the purpose of conducting investigations.
6. The standard of review used by the Ethics Commission in determining whether a violation has occurred will be a preponderance of the evidence. The Commission may admit and give appropriate weight to evidence, including hearsay, that possesses probative value commonly accepted by reasonable and prudent persons.
7. The Ethics Commission will make written findings of fact and conclusions based on evidence presented at the hearing. The opinion of the Ethics Commission will contain the alleged violations, the elements of the violations, the findings of fact by the Ethics Commission, action taken by the Ethics Commission, and the number of votes supporting and opposing the Commission's opinion. The Ethics Commission will send its written findings to the complainant and the subject of the complaint and post the opinion on the Commission's website.
8. Written reports of investigations and all documentary evidence will be maintained by the Commission.
9. All witnesses must swear or affirm to tell the truth prior to testifying.
10. All hearings must be recorded. If it becomes necessary to have a reporter prepare a transcript of the hearing, the party making the request will bear the cost.
11. If after a hearing the Commission finds that no violation of the Ethics Law has occurred, the Commission shall dismiss the complaint. If the Commission dismisses a complaint, the Commission must not release to the public the identity of the subject of the complaint, the complainant, or any witness.
12. If the Commission finds a violation, it may issue sanctions as permitted by Section 1-7.1-10 of the Ethics Law.

C. Confidentiality

1. The complaint remains confidential until the Commission finds that the Ethics Law has been violated, makes a referral under Section V.B.4 or refers the matter for prosecution.

2. If the Commission finds that there has been no violation of the Ethics Law, it will issue a written decision. The name of the individual who was the subject of the complaint will remain confidential and the person's name will not be included in the decision.

D. Right to legal representation and participation

1. Before making a decision adverse to the subject of the complaint, the subject of the complaint has the right to be heard by the Commission.
2. The subject of the complaint has the right to be represented by legal counsel in his meetings with the Commission and in any hearings conducted by the Commission. The subject of the complaint is responsible for payment of any legal fees associated with the attorney's representation.

E. Oaths and subpoenas

1. The Commission shall administer oaths to persons presenting testimony or evidence to the Commission.
2. Once a complaint has been filed and is being investigated, the Commission may issue subpoenas to require any person to respond under oath to written questions and issue subpoenas for the attendance of witnesses to testify or to produce verified copies of records or other tangible objects. (A sample subpoena and instructions for issuing, completing, and processing the subpoena are attached as an Appendix A.)
3. The Commission should make every effort to obtain testimony or evidence from a party or other person or entity before issuing a subpoena.
4. A subpoena may only be issued upon the affirmative vote of six members after a majority of the Commission determine that a complaint has merit.
5. County officials, employees and other individuals are expected to comply with all subpoenas issued by the Commission.
6. A subpoena issued by the Ethics Commission may be judicially enforced.

F. Decisions

1. If the Commission decides to dismiss the complaint or makes a decision on the merits of the complaint, it shall give written notice of the dismissal to the complainant and to the subject of the complaint. Decisions on complaints should generally be issued within 90 days of receipt of the complaint. The time for a decision on a complaint may be extended, if necessary, particularly when there is a referral to another agency. Written decisions shall be signed by the Chair or other designated member of the Commission.
2. If the Commission finds that the person who is the subject of the complaint has violated the Ethics Law, the written decision shall include findings of fact and conclusions of law for each violation alleged in the complaint. The name of the subject of the complaint must also be included in the Commission's written decision. The decision is a public record that must be posted on the Ethics Commission's website.

3. If the Commission finds that the person who is the subject of the complaint has violated the Ethics Law, it may take such steps as allowed in the Law.
4. Where a violation is found, a copy of the decision shall be sent to the County Executive, the County Council, and the Chief Administrative Officer.

VII. Financial Disclosure Forms

The financial disclosure forms are drafted by the legal advisor to the Commission and approved by the Commission members. Forms and responses may be provided and stored electronically. The County Attorney's Office shall send the annual financial disclosure forms out around April 1 of each year to the officials and employees designated in the Ethics Law.

The annual financial disclosure forms are to be completed and returned to the County Attorney's Office no later than April 30. The County Attorney's Office will send reminders and notify the supervisors of the persons who have not returned their forms, as deemed necessary. The Commission may assess a late fee of \$2 per day up to a maximum of \$250 for failure to timely file a financial disclosure statement.

The Commission will review the completed financial disclosure forms and take appropriate action based on the information contained in the forms. The Commission may ask the legal advisor to obtain additional information if the information provided is incomplete, unclear or raises questions under the Ethics Law.

VIII. Guidelines For Use in Conflict-of-Interest Situations

The following guidelines will be used in making decisions on conflict-of-interest questions brought to the Commission:

A. Except where a direct financial gain can be identified or a direct employer-employee business relationship or a family relationship exists, as defined in the Ethics Law, the Commission will not view indirect relationships as de facto conflicts of interest. The Commission will, however, consider the evidence presented when personal gain is alleged.

B. Officials are expected to "read their hearts" prior to becoming involved in a hearing or voting on a case. If the official recognizes that he cannot render a fair and impartial decision based on the facts presented, he should remove himself from the case.

C. If the official recognizes a conflict, or the appearance of a conflict, the official should state this conflict before the hearing and physically remove himself from the hearing room and avoid discussion of the case with fellow officials until a decision is made.

IX. Educational Efforts

A short summary of the Ethics Law appears in an appendix to the Personnel Rules handbook given to all employees. In addition, a brochure adopted by the Commission appears on the Commission's webpage. The webpage also includes Guidances, Advisory Opinions and Decisions on Complaints that have been founded.

X. Role of Alternate Member

The alternate will attend Commission meetings and may participate fully in Commission discussions; provided, however, that the alternate shall not vote unless one of the regular members is not present or is otherwise unable to vote.

Adopted on this 8th day of May 2024.

Appendix “A”

Instructions for Issuance of Subpoenas by Ethics Commission

I. Subpoenas are authorized and issued as follows:

- A. The Commission may:
 - 1. Issue subpoenas to require any person to respond under oath to written questions.
 - 2. Issue subpoenas for the attendance of witnesses to testify or to produce verified copies of records or other tangible objects.
- B. County officials and employees and other individuals are expected to comply with all subpoenas from the Ethics Commission.
- C. A subpoena may be issued by the Commission upon the affirmative vote of six members after a majority of the Commission determines that a complaint has merit.
- D. A subpoena issued under this subsection may be judicially enforced.

II. Authorization

- A. The Commission must have opened, either by complaint from an outside person or on its own volition, a complaint that the Commission deems to have merit.
- B. The Commission must authorize a subpoena by vote of no less than six of its members.

III. Issuance

The Commission’s legal advisor, either from the County Attorney’s Office or outside legal counsel to the Commission, will prepare the subpoena. The subpoena should be completed as follows:

- A. COMPLAINT NUMBER
Fill in the case number assigned to the complaint
- B. TO
Enter the name and address of the individual or entity to whom the subpoena is directed.
- C. TO APPEAR BEFORE
Enter the name of the person or the Ethics Commission, before whom the individual or entity receiving the subpoena is required to appear.
- D. AT
Enter the address where the recipient is required to attend.
- E. ON THE
Enter the date and time the recipient is required to appear.
- F. TO

Check one or more of the boxes to respond to written questions, produce records, or attend a deposition.

G. AND YOU ARE HEREBY REQUIRED

If necessary, enter a list of the records to be brought or the questions that must be answered.

H. AFFIX

The subpoena will be signed by the Commission's Chair. In the event that the Chair is not available or has decided not to participate in the matter before the Commission, the Vice Chair will sign the subpoena.

IV. Service

The subpoena must be served within 60 days after its issuance and may not be served thereafter.

V. Return of Service

Complete this section when service has been effected. The person serving the subpoena will check the block certifying how the subpoena was served. This person will also provide the date that the subpoena was served, his or her name, and official title.

A. Service of the Subpoena

The original subpoena is served on the subject and the County Attorney will maintain a completed copy.

B. Service by Mail

1. Normally, subpoenas will be served by certified or registered mail, return receipt requested. Unless the Commission determines otherwise, service should be arranged, when reasonably possible, by prior phone conversation. Service may also be arranged through the recipient's attorney.

2. If the subpoena is being served on an individual, mail delivery should be restricted to that individual. In all cases, a letter should accompany a subpoena. The file copy of the letter accompanying the subpoena should note the specific number of the certified or registered letter for evidence that it related to the specific subpoena. When service is complete, the second box of the return of service should be checked and a copy of the return receipt should be kept with the copy of the subpoena.

C. Service in Person

Where it proves impractical or impossible to serve the subpoena on an individual by mail, it may be served personally, although a copy should also be sent by mail. Personal service is complete when the subpoena is delivered directly to the subject, is left at the subject's residence with a person of suitable age and discretion residing there fulltime, such as a spouse, or is left with the person in charge at the office or place of business of the recipient.

Complaint No. _____

SUBPOENA

FREDERICK COUNTY ETHICS COMMISSION

*To
You are hereby required to appear before
of the Frederick County Ethics Commission at
in the County of*

*on the _____ day of _____ at _____ o'clock a.m. /p.m. of that
day, to :*

☐ *respond under oath to written questions;*

☐ *produce verified copies of records;*

☐ *attend a deposition to answer questions under oath.*

This investigation is being conducted pursuant to § 1-7.1-4(B) of the Frederick County Code and in order to determine whether any person has violated the Frederick County Ethics Law or the Public Ethics Law;

And you are hereby required to bring with you and produce at said time and place the following records and/or answer the following questions:

This subpoena has been issued pursuant to an affirmative vote of six members of the Ethics Commission upon a finding that an ethics complaint has merit. Failure to comply with the subpoena will be judicially enforced. This subpoena must be served within 60 days after its issuance and may not be served thereafter.

**In testimony whereof I have hereunto affixed my signature
at _____**

this _____ day of _____, _____

Chair, Frederick County Ethics Commission

Return of Service

I hereby certify that the original of the within subpoena was duly served on the person named herein.

(Check method used)

☐ *in person*

☐ *by certified or registered mail*

☐ *other (specify) _____*

☐ *by leaving at principal office
or place of business, to wit:*

on

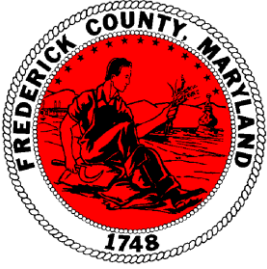
(Month, day, year)

(Name of person making service)

(Official Title)

Appendix “B”

Regulations



FREDERICK COUNTY ETHICS COMMISSION

FREDERICK COUNTY, MARYLAND

OFFICE OF THE COUNTY ATTORNEY

Winchester Hall • 12 East Church Street • Frederick, Maryland 21701
301-600-1030 • FAX 301-600-1161 • TTY: Use Maryland Relay
www.co.frederick.md.us

FREDERICK COUNTY ETHICS COMMISSION

COMMISSIONERS

Blaine R. Young
President

C. Paul Smith
Vice President

Billy Shreve

David P. Gray

Kirby Delauter

CHAIRMAN

Hayden B. Duke

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



TRUSTWORTHINESS • RESPECT
RESPONSIBILITY • FAIRNESS
CARING • CITIZENSHIP

CHARACTER COUNTS! and the Six
Pillars of Character are service
marks of the CHARACTER
COUNTS! Coalition, a project of the
Josephson Institute of Ethics.
www.charactercounts.org

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

/s/
Jesse Goode, Jr., Member

/s/
Harold Otis, Member

/s/
E. Donald Foster
Alternate Commission Member