

ETHICS and GOVERNMENT EMPLOYEES

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1 GCA § 1906. Qualifications.

The Public Auditor shall be a citizen of the United States and a resident of Guam for the five (5) years preceding his or her election, and shall not have been convicted of a felony or suspended in any U.S. or non-U.S. jurisdiction by an **ethics** board overseeing the certified public accountant or attorney, as the case may be. The Public Auditor must either:

1. be a certified public accountant, or
2. be an attorney at law, or
3. have at least five (5) years of experience in the establishment or enactment of government budgets.

SOURCE: § 1906 repealed/reenacted by P.L. 25-42:06.

4 GCA § 4205. Miscellaneous Prohibitions.

(a) Preferences, conditions and prohibitions concerning employment in the Government shall conform with the provisions of the Organic Act of Guam. No person shall be discriminated against in connection with any of the processes provided for by this Chapter or in the rules adopted there under because of race, color, political opinions or religious opinions or affiliations.

(b) Any person who uses or attempts to use political influence or promises any advantage in connection with the selection or promotion of any employee in the classified services, solicits contributions for political purposes or solicits during office hours or at any time makes demands

upon employees in the classified services for such contribution shall be guilty of a petty misdemeanor.

(c) Any person who willfully makes a false or misleading statement in order to secure employment, advancement or other benefits under this Chapter or under the rules adopted there under shall be guilty of a petty misdemeanor and, in addition, shall forfeit the position, employment, benefit or advancement sought through the false or misleading statement or statements.

(d) No person who advocates, or who aids or belongs to any party, organization or association which advocates the overthrow by force or violence of the government of Guam or of the United States shall be qualified to hold a Government position.

(e) No officer or employee of the Government shall conduct or engage in any business or trade outside the government service without the prior approval of his department head as provided in § 4105 of this Chapter.

In addition to the limitations contained in § 4105(d) of this Chapter:

(1) No approval shall be granted if such business or trade may be prejudicial to the best interests of the people or if there may be a conflict of interest between the officer's or employee's government position and the outside trade or business;

(2) Every officer or employee who has a direct or indirect interest in any firm, partnership, business or corporation which contracts with the Government, at the time of submission of bids or commencement of negotiations as the case may be, shall file a statement under oath with the Director of Administration for Executive Branch employees, and the Court Administrator for Judiciary employees describing such interest. Any such statement shall also be given to the department head of such employee and shall also be a public record for all purposes.

As used in this Section, interest includes ownership of not less than five percent (5%) of the firm, corporation or partnership or the employee having a position with the said firm, corporation or partnership equivalent to that of officer, manager or other decision-making position.

(f) Failure by an officer or employee to comply with any of the provisions of Subsection (e) of this Section shall be grounds for dismissal from government service and the Director of Administration or Court Administrator, as the case may be, shall order the compensation stopped of any officer or employee found to be in violation.

(g) Any contract entered into involving a violation of Subsection (e) of this Section may be declared null and void at the discretion of the Government.

(h) No contract may be entered into whereby any officer or employee shall have any administrative, supervisory or directory power over the execution thereof if such officer or employee has any direct or indirect interest in the contractor or in the contract. All contracts entered into in violation of this Subsection are void.

SOURCE: § 4134 GCA, reenacted by P.L. 16-23, amended by P.L. 17-5.

4 GCA § 4402. Quorum.

The quorum of the Commission shall be four (4) members. The affirmative vote of four (4) members shall be required for any action of the Commission. The Commission may adopt rules

to govern its procedures and the standards to be maintained by non-attorney representatives; provided, that rules adopted by the Commission shall recognize that representative is not an attorney and cannot be bound by the same standards and **ethics** as an attorney; and, further, provided, that in cases where an employee represents oneself, the Commission shall render all possible assistance to the employee to insure a fair and impartial hearing.

SOURCE: § 4171 GCA, as reenacted by P.L. 16-23. Amended by P.L. 24-60:2. Repealed and reenacted by P.L. 26-88:2.

4 GCA § 10105. Right of Organization.

Public employees shall have the right to form, join, assist and participate in the management of employee organizations or their own choice and to act as organization representative or to refrain from any such activity, without interference, restraint, coercion or discrimination and without fear of penalty or reprisal; provided that, employees shall not participate in the management of an organization or act as an organization representative, where such activity would result in a conflict of interest or otherwise be incompatible with law or with employee's official duties.

SOURCE: GC § 4404 GC.

4 GCA, Ch. 15. STANDARD OF CONDUCT FOR ELECTED OFFICERS, APPOINTED OFFICERS, AND PUBLIC EMPLOYEES OF THE GOVERNMENT OF GUAM

NOTE: Chapter 15 was added by P.L. 23-105:1.

- Article 1. General Provisions.
- Article 2. Specified Standards.
- Article 3. Guam Ethics Commission.
- Article 4. Administration and Enforcement.

ARTICLE 1 GENERAL PROVISIONS

- § 15100. Construction.
- § 15101. Applicability.
- § 15102. Definitions.

§ 15100. Construction.

This Chapter shall be liberally construed by the courts of this Territory to promote the highest standards of ethical conduct within the Territorial government.

§ 15101. Applicability.

This Chapter shall apply to every employee as defined herein.

§ 15102. Definitions.

When used in this Chapter, these key words shall have the indicated meaning:

- (a) *business* includes any corporation, partnership, any sole proprietorship, any trust or foundation, or any other individual or organization carrying on any business whether or not operated for profit;

(b) *compensation* means any money, thing of value or economic benefit conferred on or received by any person subject to this Chapter, in return for services rendered or to be rendered by himself or another;

(c) *controlling interest* means any proprietary or ownership interest in a business or other undertaking;

(d) *employee* means any nominated, appointed, or elected officer or individual employed with a territorial agency as defined herein, including members of boards or commissions, and persons under personal services contracts;

(e) *employment* means any rendering of services for compensation;

(f) *financial interest* means an interest held by an individual, his or her spouse, or dependent children, which is:

- (1) an ownership interest in a business;
- (2) a creditor interest in an insolvent business;
- (3) an employment, or prospective employment for which negotiations have begun;
- (4) an ownership interest in personal or real property;
- (5) a loan or other debtor interest; or
- (6) a directorship or officership in a business.

(g) *judicial officers* includes the Justices of the Supreme Court, whether full- or part-time, and Judges of the Superior Court, including Judges pro tem and referees;

(h) *legislator* means any duly elected members of the Guam Legislature;

(i) *official act* or *official action* means a decision, recommendation, approval, disapproval, or other action, including inaction which involves the use of discretionary and non-discretionary authority;

(j) *official authority* includes administrative, judicial or legislative powers of decision, recommendation, approval, disapproval, or other discretionary or non-discretionary action; and

(k) *territorial agency* or *agency* shall mean every branch of government, public corporations, all government of Guam departments, bureaus, and line agencies, autonomous and semi-autonomous agencies, instrumentalities, entities or sub-entities thereof, the Mayor's Council, and Mayors' Offices.

ARTICLE 2
SPECIFIED STANDARDS

- § 15201. Gifts.
- § 15202. Reporting of Gifts.
- § 15203. Confidential Information.
- § 15204. Fair Treatment.
- § 15205. Conflicts of Interest.
- § 15206. Contracts.
- § 15207. Contracts Voidable.

- § 15208. Requirements of Disclosure.
- § 15209. Disclosure Files; Disposition.
- § 15210. Restrictions on Post Employment.
- § 15211. Violation.

§ 15201. Gifts.

No employee shall solicit, accept, or receive, directly or indirectly, any gift valued singly or in the aggregate from a single source in excess of \$200, whether in the form of money, prize, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, when a reasonable person would infer that the gift is intended to influence the employee in the performance of that individual's official duties or is intended as a reward for any official action on that individual's part.

§ 15202. Reporting of Gifts.

(a) Every employee shall file a gifts disclosure statement with the Guam Ethics Commission on June 30 of each year if all the following conditions are met:

(1) The employee, or spouse or dependent child of an employee, received directly or indirectly from any source any gift or gifts valued singly or in the aggregate from a single source in excess of \$200, whether the gift is in the form of money, services, goods, or in any other form;

(2) The source of the gift or gifts have interests that may be affected by the official action or lack of action by the employee; and

(3) The gift is not exempted by subsection (d) from reporting requirements under this section.

(b) The report shall cover the period from January 1 of the preceding calendar year through December 31 of the year of the report.

(c) The gifts disclosure statement shall contain the following information:

(1) A description of the gift;

(2) A good faith estimate of the value of the gift;

(3) The date the gift was received; and

(4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.

(d) Excluded from the reporting requirements of this section are the following:

(1) Gifts received by will or intestate succession;

(2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;

(3) Gifts from a spouse, fiancé, fiancée, any relative within three degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;

(4) Political campaign contributions that comply with territorial law. This section shall not exempt the recipient of campaign contributions from the reporting requirements of the Election Code.

(5) Anything available to or distributed to the public generally without regard to the official status of the recipient;

(6) Gifts that within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and

(7) Exchange of approximately equal value on holidays, birthday, or special occasions.

(e) Failure of an employee to file a gifts disclosure statement as required by this section shall be a violation of this chapter.

§ 15203. Confidential Information.

No employee shall disclose information which is considered a private document by existing law, and which the employee acquires in the course of official duties, or use the information for personal gain or for the benefit of someone else.

§ 15204. Fair Treatment.

No employee shall use or attempt to use an official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or herself, a spouse, children, or others, including but not limited to the following:

(a) seeking other employment or contract for services by the use or attempted use of the individual's office or position;

(b) accepting, receiving, or soliciting compensation for the performance of official duties or responsibilities except as provided by law;

(c) using government time, equipment, or other facilities for private business purposes;

(d) soliciting, selling, or otherwise engaging in a financial transaction with a subordinate or a person or business whom the employee inspects or supervises in official capacity.

(e) Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or making statements or taking action in the exercise of legislative functions. Every legislator shall file with the Guam Ethics Commission a full and complete public disclosure of the nature and extent of the legislator's interest on any legislative transaction which primarily affects only the legislator or legislators involved or their spouses and not the community as a whole or a segment thereof. Disclosure must be made at time of introduction of such legislation, or when the legislator shall first have knowledge of such legislation.

§ 15205. Conflicts of Interest.

(a) No employee shall take any official action directly affecting:

(1) business or other undertaking in which the employee has a financial interest; or

(2) private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to be disqualified on any matter described in item (1) or (2) of this Subsection may be in violation of this Subsection even if the individual has complied with the disclosure requirements of § 15208; and a person whose position on a board, commission or committee is mandated by statute, resolution or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which such person has a financial interest; provided that the financial interest is related to the member's particular qualifications.

(b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.

(c) No employee shall assist any person or business or act in a representative capacity before any territorial agency for any compensation in any transaction involving the Territory.

(d) No employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the employee has participated or will participate as an employee, nor shall the employee assist any person, or business, or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the Legislature or territorial agency of which the individual is an employee.

(e) No employee shall assist any person or business or act in a representative capacity before a territorial agency for a fee or other compensation, on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that agency unless such employee has complied with the disclosure requirements of § 15208.

(f) Nothing herein shall preclude an employee from having outside business interests or employment so long as such interests or employment do not interfere with performance of official duties and is not otherwise in direct conflict with this Chapter.

§ 15206. Contracts.

(a) A territorial agency shall not enter into any contract with an employee or with a business in which an employee has a controlling interest, unless the contract has been awarded through an open, public process. A territorial agency may, however, enter into such contract without resort to competitive bidding process when, in the opinion of the General Services Agency or the procurement officer of that branch of government, the property or services does not fall within the purview of competitive bidding; provided that written justification for the non-competitive award of such contract be made a matter of public record and shall be filed with the Guam Ethics Commission at least ten (10) days before such contract is entered into.

With regards to members of boards, commissions, and committees, this Subsection shall apply only to contracts entered into between a business in which a member has a controlling interest and a territorial agency in which the board, commission, or committee to which the individual is appointed has jurisdiction.

(b) A territorial agency shall not enter into a contract with any person or business which is represented or assisted in a material manner in the matter by a person who has been an employee of that agency within the preceding twelve (12) months and who participated while in

territorial office or employment in a material manner in the matter with which the contract is directly concerned.

§ 15207. Contracts Voidable.

In addition to any other penalty provided by law, any contract entered into by the Territory in violation of this Chapter, is voidable by the Territory; provided that in any act to void a contract pursuant to this Section, the interests of third parties who may be damaged thereby, shall be taken into account, and the action to void the transaction is initiated within ninety (90) days after the determination of a violation under this Chapter. The Attorney General shall have the authority to enforce this provision.

§ 15208. Requirements of Disclosure.

(a) All financial disclosure reports required to be filed with the Guam Election Commission pursuant to Chapter 13 of Title 4, Guam Code Annotated, shall be reported to the Guam Ethics Commission within three working days of filing with the Guam Election Commission.

(b) The Guam Election Commission shall require additional information on its financial disclosure reports, as may be requested by the Ethics Commission in accordance with this Section, and the Ethics Commission may request such information directly of the employee if it is not forthcoming from the Election Commission.

(c) Failure of an employee to file a disclosure of financial interests as required by this Chapter shall be a violation of this Chapter.

§ 15209. Disclosure Files; Disposition.

(a) All financial disclosure statements filed by an employee shall be maintained by the Guam Ethics Commission during the term of office of the employee, and for a period of three years thereafter. Upon the expiration of the three-year period, the financial disclosure statement and all copies thereof shall be destroyed.

(b) Nothing herein shall bar the Guam Ethics Commission from retaining a financial disclosure statement or copy of a financial disclosure statement that has become part of a charge case or advisory opinion request, or is part of an ongoing investigation.

§ 15210. Restrictions on Post Employment.

(a) No former employee shall disclose any information which by law is not available to the public and which the employee acquired in the course of official duties or use the information for personal gain or the benefit of anyone.

(b) No former employee shall, within twelve (12) months after termination from employment, assist any person or business, or act in a representative capacity for a fee or other consideration, on matters involving official action by the particular territorial agency with which the employee had actually served.

(c) This Section shall prohibit any agency from contracting with a former employee to act on a matter on behalf of the Territory within the period of limitations stated herein, unless exempted by law.

§ 15211. Violation.

(a) Any territorial action obtained in violation of this chapter for employees is voidable in the same manner as voidable contracts as provided for under § 15207; and the Territory, by the Attorney General, may pursue all legal and equitable remedies available to it.

(b) The Territory, by the Attorney General, may recover any fee, compensation, gift, or profit received by such person as a result of a violation of these standards by an employee or former employee. Action to recover under the Subsection (b) shall be brought within two (2) years of such violation under this Chapter.

**ARTICLE 3
GUAM ETHICS COMMISSION**

§ 15301. Guam Ethics Commission Established; Composition.

There shall be within the government of Guam, a commission to be known as the >Guam Ethics Commission=. The Commission shall consist of seven (7) members to be appointed by *I Maga'lahi*. Each appointee shall be a United States citizen and a bona fide resident of Guam. No person who has ever been convicted of a felony shall be eligible to serve on the Commission. Members of the Commission shall not be an employee, as defined herein, or have any member of their immediate family employed by the government of Guam. All appointments to the Guam Ethics Commission shall be confirmed by *I Liheslatura*.

The Chairman of the Commission shall be elected by the majority of the Commission. The term of office of each member shall be for four (4) years, provided that of the original members, two (2) shall hold office for two (2) years, two (2) shall hold office for three (3) years, and one (1) shall hold office for four (4) years. The determination of these members= length of office shall be by lot drawn by the members at their initial meeting. No person shall be appointed consecutively to more than two (2) terms as a member of the Commission.

Members shall serve without compensation, except that they shall receive a stipend of Fifty Dollars (\$50.00) per meeting not to exceed four (4) meetings per calendar month, and shall be compensated for all normal expenses of travel, and for the cost of meals while in session.

Vacancies shall be filled for the remainder of the unexpired term in the same manner as the original appointments. *I Maga'lahi* may remove or suspend any member of the Commission for cause, upon the filing of a written finding with the Commission and upon service of a copy of the written findings on the member removed or suspended.

SOURCE: Amended by P.L. 27-141:3.

ARTICLE 4
ADMINISTRATION AND ENFORCEMENT

- § 15401. Duties of Commission; Complaint, Hearing, Determination.
- § 15402. Filing of False Charges.
- § 15403. Procedure.
- § 15404. Disciplinary Action for Violation.
- § 15405. Cooperation.
- § 15406. Concurrent Jurisdiction.
- § 15407. Staff.
- § 15408. Prohibition From Political Activity.
- § 15409. Judicial Branch.
- § 15410. Repeal.
- § 15411. Severability.

§ 15401. Duties of Commission; Complaint, Hearing, Determination.

(a) The Commission shall have the following powers and duties:

(1) It shall prescribe a form for the financial disclosures required by § 15208 and shall establish an orderly procedure for implementing the requirements of that Section.

(2) It shall render advisory opinions upon the request of any employee or former employee as to whether the facts and circumstances of a particular case constitutes or will constitute a violation of the code of **ethics**. The opinion rendered, until amended or revoked, shall be binding on the Commission in any subsequent charges concerning the employee or former employee who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the employee or former employee in the request for an advisory opinion.

(3) It shall initiate, receive and consider charges concerning alleged violations of this Chapter, initiate or make investigations, and hold hearings.

(4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the Commission and require the production for examination of any books, papers or electronic records relative to any matter under investigation or in question before the Commission. Before the Commission shall exercise any of the powers authorized herein with respect to any investigation or hearings, it shall by formal resolution, supported by a vote of five or more members of the Commission, define the nature and scope of its inquiry.

(5) It may, from time to time, make, amend, and repeal such rules and regulations, not inconsistent with this Chapter as in the opinion of the Commission, seem appropriate for the carrying out of this Chapter for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the Commission. The rules and regulations, shall be adopted in conformance with the Administrative Adjudication Law, and shall have the force and effect of law.

(6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this Chapter in all proceedings commenced within three (3) years of

an alleged violation of this Chapter by an employee, or a former employee. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this Chapter. A proceeding shall be deemed commenced by the signing of a charge by five (5) or more members of the Commission.

(7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and employees on matters of **ethics** in government employment.

(b) Charges concerning the violation of this Chapter shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the Commission must be signed by five (5) or more members of the Commission. The Commission shall notify in writing every person against whom a charge is received and afford him an opportunity to explain the conduct alleged to be in violation of this Chapter. The Commission may investigate, after compliance with this Section, such charges and render an informal advisory opinion to the alleged violator. The Commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with such informal advisory opinion or if a majority of the members of the Commission determine that there is a probable cause for belief that a violation of this Chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator in accordance with the rules for personal service found in Guam Rules of Civil Procedure. The person so charged shall have twenty (20) days after service thereof to respond in writing to the charge and statement.

(c) Any Commission member or any individual, including the individual making the charge, who without permission of the Commission, divulges information obtained from the Commission or who reveals confidential actions of or what happened in closed proceedings before the Commission concerning the charge prior to the issuance of the complaint or other final action by the Commission, except as permitted by this Chapter, shall be guilty of a misdemeanor.

(d) If after twenty (20) days following personal service, a majority of the members of the Commission conclude that there is reason to believe that a violation of this Chapter has been committed, then the Commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books, papers, records, or electronic recordings relative to the proceedings, (3) to be represented by counsel, and (4) to have the right of cross-examination. All witnesses shall testify under oath and the hearings shall be closed to the public unless the party complained against requests an open hearing. The Commission shall not be bound by the strict rules of evidence but the Commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited into the General Fund.

(e) The Commission shall make its findings and render its decision based on a preponderance of the evidence. A decision of the Commission pertaining to the conduct of any

employee shall be in writing and signed by five (5) or more of the members of the Commission. Deliberations of the Commission shall be closed to the public and to all parties.

(f) The Commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The Commission shall make sufficient deletions in the summaries to prevent disclosing the identify of persons involved in the decisions or opinions.

§ 15402. Filing of False Charges.

(a) Any person who knowingly and intentionally files a false charge with the commission, or any member of the commission who initiates action against any Guam official, Guam employee, or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in Title 9 of Guam Code Annotated (Crimes and Corrections).

(b) Whoever is convicted in a court of competent jurisdiction of the crime of perjury under this section, in addition to any other punishment prescribed by law thereof, shall be required by court order to reimburse the person against whom the false charge was filed for all of the person's legal expenses and court costs incurred in relation to that person's defense against the false complaint.

(c) If such charge is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above, and shall also pay an equal amount to the general fund of the Territory.

(d) This section shall not supersede or preclude any other right or remedy at law available to the person falsely accused.

§ 15403. Procedure.

(a) When the Commission, after due hearings, believes that there is cause for the possible filing of criminal charges, it shall refer the complaint to the Attorney General's Office or appropriate authority for its disposition.

(b) With respect to former employees, the Commission may, with the consent of five (5) or more members of the Commission, issue a public statement of its findings and conclusions, and the Attorney General may exercise whatever legal or equitable remedies are available to the Territory.

(c) When after due hearing, the Commission finds that the violation committed by an employee is non-criminal in nature, the Commission will remand the case to the agency where the employee is employed with the recommendation that the agency impose the corresponding punishment in accordance with the agency's personnel rules and regulations.

§ 15404. Disciplinary Action for Violation.

In addition to any other powers the Civil Service Commission or other government agency may have to discipline employees, the appropriate agency involved may reprimand, put on probation, demote, suspend, or discharge any employee found to have violated this Chapter.

§ 15405. Cooperation.

The Guam Ethics Commission may request and shall receive from every governmental agency cooperation and assistance in the performance of its duties.

§ 15406. Concurrent Jurisdiction.

In addition to any provision contained in this Chapter, the Legislature and the Judicial Branch may each prescribe further rules of conduct covering its members and may investigate and discipline its employees for any violation of this Chapter, or its own Rules, or both.

§ 15407. Staff.

The Guam Ethics Commission may employ such persons as it deems necessary for the performance of its functions. They shall submit an annual budget request to the Legislature for its required operations.

§ 15408. Prohibition from Political Activity.

Members of the **ethics** commission and its staff shall not take an active part in political management or in political campaigns during the term of office or employment.

§ 15409. Judicial Branch.

The Chief Justice of the Supreme Court shall have jurisdiction and governance over all justices and judges of the judicial branch in matters of **ethics** as covered in this Chapter 15.

NOTE: Pursuant to P.L. 28-076:9 (Nov. 25, 2005), this section will be repealed and reenacted, effective, January 1, 2007, as follows:

“§ 15409. Applicability of Ethics in Government Program.

(a) Any person who is an elected official of the government of Guam shall attend an **ethics** in government program within ninety (90) days of taking office. Additionally, elected officials shall undergo refresher **ethics** in government program at least once every four (4) years. The Guam Ethics Commission (“Commission”) may grant permission for an elected official to attend a later program for good cause shown. The Commission shall award a certificate of completion to those completing the program.

(b) Any person who is appointed to a position as board or commission member, including autonomous agencies, director, deputy director, or by whatever title denotes the head and first assistant of a government of Guam agency, department, public corporation, authority, or any other entity of the executive branch, shall attend an **ethics** in government program within the first six (6) months of his or her appointment. Additionally, appointed officials shall undergo refresher **ethics** in government program at least once every four (4) years. The Commission may grant permission for an appointed official to attend a later program for good cause shown. The Commission shall award a certificate of completion to those completing the program.”

SOURCE: P.L. 28-076:2 (Nov. 25, 2005).

§ 15410. Repeal.

Those portions of the Guam Code Annotated, which are in conflict with any section of this Chapter, are hereby repealed.

NOTE: Pursuant to P.L. 28-076:9 (Nov. 25, 2005), this section will be repealed and reenacted, effective, January 1, 2007, as follows:

“§ 15410. Ethics in Government Program Guidelines.

The **ethics** in government program shall be provided by the University of Guam (“UOG”) or other providers. The Public Auditor shall develop standards for the **ethics** program until the Guam Ethics Commission is appointed and functioning, at which time the Commission shall assume authority to develop the standards. The providers shall repeat the course as necessary to accommodate those who are required to attend. The course shall not exceed four (4) hours and shall be available in a single day and its scheduling shall accommodate the different work schedules of the persons affected by this Act.

(a) The program topics shall include, but not be limited to:

- (1) Guam statutes concerning **ethics**;
- (2) Guam statutes concerning lobbying;
- (3) Group participation in discussing, analyzing, and solving general **ethics**-related dilemmas;
- (4) Guam procurement laws and regulations;
- (5) Guam contracting laws and regulations;
- (6) Parliamentary procedure;
- (7) Fiduciary responsibility;
- (8) Personnel policy;
- (9) Government finance; and
- (10) Open Government Law and Sunshine Reform Act of 1999.

(b) The cost of tuition, books and training materials for the **ethics** in government program of the officials specified in §15409(b) of this Chapter, shall be paid by the agency that employs the official.”

SOURCE: P.L. 28-076:3 (Nov. 25, 2005).

§ 15411. Severability.

If any part of this Chapter 15 shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof, and shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment shall have been rendered.

NOTE: Pursuant to P.L. 28-076:9 (Nov. 25, 2005), this section will be repealed and reenacted effective January 1, 2007 as follows:

“§ 15411. Judicial Branch.

The Chief Justice of the Supreme Court shall have jurisdiction and governance over all justices and judges of the judicial branch in matters of **ethics** as covered in this Chapter 15.”

SOURCE: P.L. 28-076:4 (Nov. 25, 2005).

§15412. Repeal. [This new § 15412 will be effective January 1, 2007]

Those portions of the Guam Code Annotated and the Government Code of Guam, which are in conflict with any section of this Chapter, are hereby *repealed*.

SOURCE: Added by P.L. 28-076:5 (Nov. 25, 2005).

§ 15413. Severability. [This new § 15413 will be effective January 1, 2007]

If any part of this Chapter 15 shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof, and shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment shall have been rendered.

SOURCE: Added by P.L. 28-076:6 (Nov. 25, 2005).

5 GCA, Ch. 56, ART. 11. **ETHICS IN PUBLIC CONTRACTING**

- Part A. Definitions.
- Part B. Standards of Conduct.
- Part C. Remedies.
- Part D. **Ethics** Enforcement.

PART A
DEFINITIONS

§ 5601. Definitions.

§ 5601. Definitions.

As used in this Chapter:

(a) *Blind Trust* means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

(b) *Confidential Information* means any information which is available to an employee only because of the employee's status as an employee of this Territory and is not a matter of public knowledge or available to the public on request.

(c) *Conspicuously* means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have noticed it.

(d) *Direct or Indirect Participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

(e) *Financial Interest* means:

(1) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than Two Thousand Five Hundred Dollars (\$2,500) per year, or its equivalent;

(2) ownership or such interest in any property or any business as may be specified by the **Ethics** Commission; or

(3) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(f) *Gratuity* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(g) *Immediate Family* means a spouse, children, parents, brothers and sisters.

(h) *Official Responsibility* means direct administrative or operating authority whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct territorial action.

(i) *Purchase Request* means that document whereby a using agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Chapter.

SOURCE: GC § 6980. MPC § 12-101.

PART B
STANDARDS OF CONDUCT

- § 5625. Statement of Policy.
- § 5626. General Standards of Ethical Conduct.
- § 5627. Criminal Sanctions.
- § 5628. Employee Conflict of Interest.
- § 5629. Employee Disclosure Requirements.
- § 5630. Gratuities and Kickbacks.
- § 5631. Prohibition Against Contingent Fees.
- § 5632. Restrictions on Employment of Present and Former Employees.
- § 5633. Use of Confidential Information.

§ 5625. Statement of Policy.

Public employment is a public trust. It is the policy of the Territory to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the Territory. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the territorial procurement organization.

To achieve the purpose of this Chapter, it is essential that those doing business with the Territory also observe the ethical standards prescribed herein.

SOURCE: GC § 6980.1. MPC § 12-201.

§ 5626. General Standards of Ethical Conduct.

(a) General Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in §§ 5628 through 5633 of this Chapter.

(b) General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section and §§ 5628 through 5633 of this Chapter is also a breach of ethical standards.

SOURCE: GC § 6980.2. MPC § 12-202.

§ 5627. Criminal Sanctions.

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of Title 9 of the Guam Code Annotated (Crimes and Corrections), they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Chapter.

SOURCE: GC § 6980.3. MPC § 12-203 modified to refer to appropriate portions of Guam law.

§ 5628. Employee Conflict of Interest.

(a) Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

(2) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or

(3) any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(b) Financial Interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the Civil Service Commission.

(c) Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Civil Service Commission in accordance with § 5676(c) of this Chapter for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(d) Notice. Notice of this prohibition shall be provided in accordance with regulations promulgated by the Civil Service Commission.

SOURCE: GC § 6980.4. MPC § 12-204 modified.

COMMENT: Modification is to refer employees to the Civil Service Commission for opinions on conflicts of interest, since this Chapter does not create a separate **Ethics** Commission, but continues the general supervision of employment matters with the Civil Service Commission and gives the Policy Office responsibility for opinions requested by non-employees. Change by Committee on GGO.

§ 5629. Employee Disclosure Requirements.

(a) Disclosure of Benefit Received from Contract. Any employee who has, or obtains any benefit from, any territorial contract with a business in which the employee has a financial interest shall report such benefit to the Civil Service Commission; provided, however, that this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

(b) Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit, and fails to report such benefit to the Civil Service Commission is in breach of the ethical standards of this Section.

(c) Notice. Notice of this requirement shall be provided in accordance with regulations promulgated by the Civil Service Commission.

SOURCE: GC § 6980.5. MPC § 12-205 modified to reflect participation of Civil Service Commission.

§ 5630. Gratuities and Kickbacks.

(a) Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract; or to any solicitation or proposal therefor.

(b) Kickbacks. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(c) Contract Clause. The prohibition against gratuities, kickbacks and favors to the Territory prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

(d) Favors to the Territory. For purposes of this Section, a favor is anything, including raffle tickets, of more than de minimus value and whether intended for the personal enjoyment of the receiver or for the department or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the Territory or for any employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor or gratuity may be considered a reimbursable expense of the Territory, during the pendency of any matter related to procurement, including contract performance warranty periods.

SOURCE: GC § 6980.6. MPC § 12-206. Subsection (c) amended by P.L. 18-44:16; (d) added by P.L. 18-44:15.

§ 5631. Prohibition Against Contingent Fees.

(a) Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a territorial contract upon an agreement or under standing for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(b) Representation of Contractor. Every person, before being awarded a territorial contract, shall represent, in writing, that such person has not retained anyone in violation of Subsection (a) of this Section. Failure to do so constitutes a breach of ethical standards.

(c) Contract Clause. The representation prescribed in Subsection (b) of this Section shall be conspicuously set forth in every contract and solicitation therefor.

SOURCE: GC § 6980.7. MPC § 12-207.

§ 5632. Restrictions on Employment of Present and Former Employees.

(a) Contemporaneous Employment Prohibited. Except as may be permitted by regulations pursuant to this Chapter or pursuant to Title 4 GCA, or rulings of the Civil Service Commission pursuant to this Chapter, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the Civil Service Commission.

(b) Restrictions on Former Employees in Matters Connected with Their Former Duties.

(1) Permanent Disqualification of Former Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:

- (i) judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy;

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the Territory is a party or has a direct and substantial interest.

(2) One Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible. It shall be a breach of ethical standards for any former employee, within one (1) year after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:

- (i) judicial or other proceeding, application, request for a ruling or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy; in matters which were within the former employee's official responsibility, where the Territory is a party or has a direct or substantial interest.

(c) Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:

- (1) judicial or other proceeding, application, request for a ruling or other determination;
- (2) contract;
- (3) claim; or
- (4) charge or controversy;

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of the employee's official responsibility, where the Territory is a party or has a direct and substantial interest.

(d) Selling to the Territory After Termination of Employment is Prohibited. It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed Twelve Thousand Dollars (\$12,000.00), to engage in selling or attempting to sell supplies, services other than personal services, or construction to the Territory for ninety (90) days following the date employment ceased.

The term sell as used herein means signing a bid, proposal, or contract; negotiating a contract, contracting any employee for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this Territory, nor shall a former employee be precluded from serving as a consultant to this Territory.

SOURCE: GC § 6980.8. MPC § 12-208 with salary amount added locally.

§ 5633. Use of Confidential Information.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

SOURCE: GC § 6980.9. MPC § 12-209.

PART C REMEDIES

§ 5650. Civil & Administrative Remedies Against Employees Who Breach Ethical Standards.

§ 5651. Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards.

§ 5652. Recovery of Value Transferred or Received in Breach of Ethical Standards.

§ 5650. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.

(a) Existing Remedies Not Impaired. Civil and administrative remedies against employees which are in existence on the effective date of this Chapter shall not be impaired.

(b) Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Chapter or regulations promulgated hereunder, the Civil Service Commissions may, in connection with employees of the government of Guam, direct the appointing authority to issue any one or more of the following:

- (1) oral or written warnings or reprimands;
- (2) suspension with or without pay for specified periods of time; and
- (3) termination of employment;

but the Civil Service Commission members who made such recommendation shall not sit upon any appeal from the resulting adverse action and the Governor shall appoint members pro tempore, without the consent of the Legislature, to hear such appeals.

(c) Right to Recover from Employee Value Received in Breach of Ethical Standards. The value of anything received by an employee in breach of the ethical standards of this Chapter or regulations promulgated hereunder shall be recoverable by the Territory as provided in § 5652 of this Chapter.

(d) Due Process. All procedures under this Section shall be in accordance with existing law and regulations regarding adverse actions and employee discipline promulgated pursuant to Title 4 Guam Code Annotated.

SOURCE: GC § 6981. MPC § 12-301 modified.

COMMENT: Since Guam has an established Civil Service Commission strengthened by P.L. 16-23, this system is continued. Just as the Civil Service Commission is not intended to be the body making actual decisions as to an employee's discipline, so this Section gives the CSC the power to require the appointing authority to take certain action, conforming to the appointing authority's powers in other matters dealing with employees. Since, under existing law, an employee can appeal such a decision, the CSC is authorized to hear the appeal, but with members, either permanent or temporary, who did not participate in the original decision. There is no constitutional problem with having the staff of the Commission present the case to both the first Commission hearing (where it makes the binding recommendation) and to the second where the appeal is heard. Change by Committee on GGO.

§ 5651. Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards.

(a) Existing Remedies Not Impaired. Civil and administrative remedies against non-employees which are in existence on the effective date of this Chapter shall not be impaired.

(b) Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Chapter or regulations promulgated hereunder, the Procurement Policy Office, in connection with non-employees, may impose any one or more of the following:

- (1) written warnings or reprimands;
- (2) termination of transactions; and
- (3) debarment or suspension from being a contractor or subcontractor under territorial contracts.

(c) Right to Recover from Non-Employee Value Transferred in Breach of Ethical Standards. The value of anything transferred in breach of the ethical standards of this Chapter or regulations promulgated hereunder by a non-employee shall be recoverable by the Territory as provided in § 5652 of this Chapter.

(d) Right of the Territory to Debar or Suspend. Debarment or suspension may be imposed by the Procurement Policy Office in accordance with the procedures set forth in § 5426 of this

Chapter for breach of the ethical standards of this Chapter, provided that such action may not be taken without the concurrence of the Attorney General.

(e) Due Process. All procedures under this Section shall be in accordance with the Administrative Adjudication Law.

SOURCE: GC § 6981.1. MPC § 12-302 modified.

COMMENT: The modifications are that (a) the Policy Office acts as the **Ethics** Commission with respect to non-employees, in order to avoid the creation of yet another commission and (b) that procedures are to be under the Administrative Adjudication Law rather than some undefined and variable "due process" requirement. Change by Committee on GGO.

§ 5652. Recovery of Value Transferred or Received in Breach of Ethical Standards.

(a) General Provisions. The value of anything transferred or received in breach of the ethical standards of this Chapter or regulations promulgated hereunder by an employee or a non-employee may be recovered from both the employee and non-employee.

(b) Recovery of Kickbacks by the Territory. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Territory and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

SOURCE: GC § 6981.2. MPC § 12-303.

PART D

****Ethics** ENFORCEMENT**

§ 5675. **Ethics:** Non-Employees.

§ 5676. **Ethics** Commission.

§ 5677. Appeal of Decisions.

§ 5675. **Ethics: Non-Employees.**

In addition to the authority and duties of the Policy Office established under § 5101 of this Chapter, such office is hereby given the functions required under this Chapter with regard to non-employees and the Civil Service Commission is hereby given the functions required with regard to employees.

SOURCE: GC § 6982. New Section.

COMMENT: In the interests of continuing the employment structure already established and in not creating unnecessary commissions, the Civil Service Commission has jurisdiction over **ethics** violations by employees and the Policy Office has jurisdiction over non-employees. Change by Committee on GGO.

§ 5676. **Ethics Commission.**

(a) Regulations. The Civil Service Commission shall promulgate regulations to implement this Chapter with regard to employees. The Procurement Policy Office shall promulgate regulations to implement this Chapter with regard to non-employees, contractors and subcontractors and the Procurement Policy Office shall do so in accordance with the applicable provisions of the Administrative Adjudication Law of this Territory.

(b) Advisory Opinions. On written request of employees, the Civil Service Commission may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. The Policy Office may render such opinions to contractors regarding the appropriateness of the course of conduct to be followed by the contractors in proposed transactions. Such requests and advisory opinions must be duly published in the manner in which regulations of this Territory are published. Compliance with requirements of a duly promulgated advisory opinion of the Civil Service Commission or Policy Office shall be deemed to constitute compliance with the ethical standards of this Chapter.

(c) Waiver. On written request of an employee, the Civil Service Commission may grant an employee, or the Policy Office may grant a contractor, a written waiver from the application of § 5628 of this Chapter and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the Territory so require or when the ethical conflict is insubstantial or remote.

SOURCE: GC § 6982.1. MPC § 12-401 modified.

COMMENT: Modification changes the reference to the applicable bodies responsible for the decisions. Change by Committee on GGO.

§ 5677. Appeal of Decisions.

(a) General. Except as provided under Subsections (b) and (c) of this Section, a decision of the Policy Office under § 5481 of this Chapter shall be reviewable in accordance with the Administrative Adjudication Law of this Territory. The opinions of the Civil Service Commission shall be reviewable in the same manner, but only in connection with their duty to render opinions.

(b) Debarment or Suspension. A decision of the Policy Office regarding debarment or suspension under 5481(b) of this Chapter shall be reviewable as provided in 5481(b) of this Chapter.

(c) An appeal from the decision of the Civil Service Commission under § 5650 of this Chapter shall be taken before members, either permanent or pro tempore, who had no part in the decision being appealed from in accordance with the rules of the Civil Service Commission governing adverse actions in general. Further review by the Superior Court, where permitted, shall be pursuant to the provisions of Title 4 Guam Code Annotated.

SOURCE: GC § 6982.2. MPC § 12-402 modified.

COMMENT: Modification reflects the split in **Ethics** Commission responsibilities between the Policy Office and Civil Service Commission. Change by Committee on GGO.

5 GCA § 10112. Penalties for Nondisclosure.

(a) If the Court finds that the public official's decision to refuse disclosure is *not* justified under this Chapter, the Court shall order the public official to pay a fine of One Thousand

Dollars (\$1,000.00). The fine shall be a personal expense for the responsible official and in no way shall the fine be paid by the agency or the government of Guam.

(b) There is created the >Government **Ethics Fund**= to assist the Guam **Ethics** Commission in ensuring ethical conduct in the government of Guam. This fund shall *not* be commingled with the General fund and shall be kept in a separate bank account. Any fines collected under Subsection (a) of this Section shall be deposited in the Government **Ethics** Fund, are appropriated to the Guam **Ethics** Commission for ethical investigations, audits and analyses of financial disclosure forms. This appropriation is continuous, contingent on the annual submission of a detailed budget to *I Liheslaturan Guåhan*, notwithstanding any other provision of law.

(c) Any officer or employee who acts arbitrarily or capriciously in withholding a public record from a requesting person shall be guilty of a misdemeanor.

(d) The Court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail after initial filing of the complaint pursuant to this Section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall *not* become a personal liability of the public official. If the Court finds that the plaintiff=s case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

5 GCA § 43112. Conflict of Interest of Members.

(For the law governing employment in or contracting with the agency or instrumentality of a former member of its governing board, see 4 GCA § 2104.)

5 GCA § 43116. Development of the Boards and Commissions Training Program.

The University of Guam shall, within six (6) months of the receipt of funding for this Section, develop a training program for members of government of Guam boards and commissions. Such training programs shall include, but not be limited to, parliamentary procedures, **ethics**, fiduciary responsibilities, leadership and direction, personnel policy and government finance.

SOURCE: Added by P.L. 24-191:2.

NOTE: Pursuant to P.L. 28-076:9 (Nov. 25, 2005), this section will be repealed effective January 1, 2007.

5 GCA § 43117. Boards and Commissions Training.

The University of Guam shall, beginning with calendar year 1999, conduct a training program for members of government of Guam boards and commissions developed under the provisions of § 43116 of this Chapter. Such training program shall be conducted at least twice per year. If there are fewer than five (5) board members who wish to take a scheduled course, the two-year requirement may be waived. The cost of tuition for such training shall be the responsibility of the agency whose board or commission, the member serves on.

SOURCE: Added by P.L. 24-191:3.

NOTE: Pursuant to P.L. 28-076:9 (Nov. 25, 2005), this section will be repealed effective January 1, 2007.

7 GCA § 5105. Procedure for Considering Removal.

(a) Any charges against any Justice or Judge must be in writing, signed by the person making the charge under oath, except that any charge initiated by the subcommittee must be signed by at least two (2) members of the subcommittee. The subcommittee shall notify in

writing every Justice or Judge against whom a charge is received and afford the Justice or Judge an opportunity to explain the charge. The subcommittee shall investigate all charges on a confidential basis, having available all the powers herein provided, and the proceedings shall not be public. If a majority of the members of the subcommittee determine that there is probable cause for belief that a Justice or Judge appears to be so incapacitated as substantially to prevent the Justice or Judge from performing judicial duties or has acted in a manner that constitutes willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, or conduct so prejudicial to the administration of justice that brings the judicial office into disrepute, the subcommittee shall certify its findings to the Chief Justice of the Supreme Court, or to the most senior Associate Justice of the Supreme Court if the Chief Justice is the subject of the charges, within thirty (30) days after such determination.

(b) Any Council member or individual, including the individual making the charge, who divulges information concerning the charge prior to the certification of the charge by the subcommittee to the Chief Justice of the Supreme Court, or if the investigation discloses that the certification should not be issued by the subcommittee, any Council member or individual who divulges at any time any information concerning the original charge or divulges the contents or discloses any matter except as permitted by this Title, shall be guilty of a misdemeanor.

(c) In the event that the subcommittee determines that a Judge or Justice should be removed from office, the Attorney General shall present the case to the Supreme Court pursuant to the provisions of § 5107, *infra*.

1985 SOURCE: CCP § 124, modified.

1985 COMMENT: Basically follows prior law, but specifies that the Attorney General act as prosecutor. This function would be similar to the Attorney General's role before a Grand Jury, except that the Commission, working with him, makes the actual decision to bring or continue charges. The Attorney General could also prefer charges to the Commission. There would be no conflict, since it is he who determines what to bring before Grand Juries, and then prosecutes. This is a better method than that used by the Bar Ethics Committee, since the Attorney General has the personnel and mechanisms for investigations and prosecutions already in place.

COMMENT: The 1992 Act does not involve the Attorney General as prosecutor until after the Council has determined that the case must be taken to the Supreme Court.

7 GCA § 42309. Ethical and Training Standards for Neutrals.

(a) Where the place of the arbitration is in Guam, a person serving as an arbitrator shall comply with the **ethics** and training standards for neutrals adopted by the Supreme Court of Guam pursuant to this Section. The Supreme Court of Guam shall adopt ethical and training standards for all neutral arbitrators and mediators.

Subsection (a) does not apply to an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

SOURCE: NOTE: Chapter 42 was repealed by P.L. 27-81:2. Chapters 42-A and 42-B were enacted by P.L. 27-81:3 and 4 (May 6, 2004). Chapter 42-A becomes effective immediately.

10 GCA §121303. Exceptions to licensure.

(a) No person may practice individual, marriage or family therapy on Guam who is *not* licensed as an individual, marriage or family therapist by the Board, *unless* such practice is

approved by other licenses issued by another licensing board. *However*, this Article shall *not* be construed to prohibit:

(1) an employee of the Federal government from performing official duties;

(2) an individual, marriage and family therapist regularly licensed in another state of the U.S. consulting with a licensed individual, marriage and family therapist on Guam;

(3) a person who is a regular student in individual, marriage or family therapy-related fields performing duties or actions as assigned by his instructors, or who is working under the supervision of a licensed, individual, marriage and family therapist.

(b) Nothing in these rules and regulations shall be construed to prevent qualified members of other professional groups, such as clinical psychology, school psychology, counseling psychology, social work or ordained clergy from doing work of a counseling nature consistent with their training and consistent with any code of **ethics** of their respective professions; *provided*, however, that they do *not* hold themselves out to the public by any of the following titles:

(1) *individual therapist*;

(2) *counselor*;

(3) *marriage therapist*;

(4) *family therapist*;

(5) *psychotherapist*; or

(6) *any combination thereof*.

17 GCA § 3112. Same: Duties and Responsibilities.

(a) The duties and responsibilities of the Guam Education Policy Board shall include:

(1) establish curriculum goals and policy;

(2) establish student performance standards and a mechanism for standardized assessment of each student based upon the adopted standards;

(3) establish policy for interscholastic sports;

(4) establish and approve a textbook list;

(5) establish student discipline policy;

(6) establish school calendar;

(7) establish graduation standards;

(8) periodically review established policies for refinement and improvement;

(9) serve as Guam's State Education Policy/Governing Board for Federal programs where such a board is required by Federal Law to include, but not be limited to, the Head Start Program;

(10) make recommendations to I Maga=lahen Guåhan and I Liheslaturan Guåhan for changes, additions or deletions to public law;

(11) approve or revoke a school's decentralization status for purposes of school-based management;

(12) act as the approving authority on behalf of the GPSS for collective bargaining agreements;

(13) establish rates and fees necessary for programs, including, but not limited to, the school lunch program;

(14) perform other duties and responsibilities as required by public law to provide an adequate public educational system; and

(15) establish a professional training and development program for its members; this program once developed and implemented, will make it mandatory that all Board members participate for the purpose of improving, expanding and refining their individual and collective policymaking skills. Some specific areas that will be covered by such a professional training and development program are: (a) Title 17, Guam Code Annotated; (b) Roberts Rules of Order; (c) Guam Public School System / government of Guam budgeting procedures and guidelines; (d) government of Guam code of **ethics** and conflicts of interests codes; (e) difference(s) between policymaking administration; (f) Board/staff relations; (g) Board media relations; and (h) conflict resolution-staff, parents, students, community, colleagues, etc.

(16) privatization of GPSS services or operations must be authorized by the Board and executed by:

(a) directing the Superintendent of Education to issue a Request for Proposal (RFP) or an Invitation for Bid (IFB) for the privatization of services within the Guam Public School System and implementing the privatization of services within the budgeted allocation level approved by the Board;

(b) the issuance of an RFP or an IFB and the award thereof shall be in conformance with all applicable procurement laws and regulations of Guam; and

(c) the disposition of any employee of the GPSS, affected or displaced by such action, shall follow all applicable laws and regulations of Guam.

(d) For all Guam Public School System privatized food services, cafeterias, or cafeteria services, contractors operating GPSS cafeterias and food services shall comply with 5GCA 5001(e) and Chapter 68 of Title 5, Guam Code Annotated, relative to the procurement of local products, in place and stead of the Guam Public School System. The Guam Public School System shall require compliance with these provisions as part of its contracts for privatization subsequent to the enactment of this Subsection.

(17) Review and approve by Board resolution the spending priorities as outlined in the fiscal year budget for the GPSS.

(b)The Board shall not collectively or individually:

(1) exert influence in the hiring, transfer, discipline or termination of any employee of the GPSS, unless expressly authorized by public law;

(2) interfere in or micro-manage the affairs of the GPSS or school within the GPSS;
or

(3) involve itself with student discipline cases, unless expressly authorized by public law, and only to the extent authorized by public law.

Any Board member shall report to I Liheslaturan Guåhan [Legislature] any potential or alleged violation of this Subsection (b).

SOURCE: Subsection (a)(16) added by P.L. 27-32:5. (10/31/03). Subsection (a)(16)(d) added by P.L. 27-106:VI:41. Subsection (a)(17) added by P.L. 28-010:3 as (a)(16) and renumbered by Compiler. Subsection (a)(14) amended by P.L. 28-045:21.

21 GCA § 63105. Conflict of Interest.

(a) No member of the Commission or employee of the Commission shall participate, in any official capacity whatsoever, in any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which any of the following has a financial interests; the member or employee himself; his spouse, his child; his partner; any organization in which he is then serving or has, within two (2) years prior to his selection or appointment to or employment by the Commission, served in the capacity of officer, director, trustee, partner, employer or employee; any organization within which he is negotiating for or has any arrangement or understanding concerning prospective partnership or employment.

(b) In any case within the coverage of this section, the prohibitions herein contained shall not apply if the person concerned advises the Board in advance of the nature and circumstances thereof, including full public disclosure of the facts which may potentially give rise to a violation of this article, and obtains from the Board a written determination that the contemplated action will not adversely affect the integrity of the Commission. Any such determination shall require the affirmative vote of two-thirds of the members of the Board.

(c) Any person who violates any provision of this section shall be guilty of a felony.

SOURCE: GC ' 13414 enacted by P.L. 12-108; subsection (c) as amended by P.L. 13-187:112.