


To: All CUNY Faculty

From: Frederick P. Schaffer 

Re: Ethics Bulletin: CUNY Faculty and Expert Testimony or Other Services

Date: April 15, 2011

Every employee in State service is bound by the provisions of the State ethics laws, which establish specific standards of conduct, restrict certain business and professional activities, both while in State service and after leaving state employment.

It has come to our attention that CUNY faculty may serve as compensated expert witnesses or consultants in the New York State Court of Claims against the interests of the State. Please be advised that for full-time CUNY employees, this is a violation of the Public Officers Law.

What are the Rules?

1. For ethics purposes, all CUNY employees are state employees, including community college employees.
2. The Public Officers Law [New York State Public Officers Law § 73 (3) (a)] governs the ethical behavior of all CUNY employees, and it holds that

“No statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims”.

3. The prohibited services are not limited to expert testimony, though that is the most common scenario. Consultation, legal representation, public relations services, graphic design services, computer services, translation services, or any other kind of compensated

services against the State's interest in the Court of Claims are also precluded. This automatic prohibition applies only to the New York State Court of Claims, and only to compensated services.

4. A faculty member may provide services at no cost in the Court of Claims against the State's interest.
5. Faculty members who wish to provide compensated services against the State's interest in some other court should check with their campus Ethics Officer or the CUNY General Counsel's office.
6. CUNY employees of State government are restricted in the activities in which they may engage while in State service. Basically, they may not engage in activities that would create or appear to create a conflict with their public duties. Some of the specific restrictions are:
 - State employees may not sell goods or services to the State or any agency of the State except through a competitively bid contract;
 - State employees may not appear before any State agency or render services for compensation in a matter before any State agency in connection with such subjects as the purchase or sale of goods, ratemaking, funding or licensing;
 - More generally, State employees should not have any interest in or engage in any business or activity "in substantial conflict" with the discharge of their public duties. This restriction prohibits them from:
 - (i) disclosing confidential information acquired in the course of their official duties or using such information to further their personal interests;
 - (ii) using or attempting to use their official positions to secure unwarranted privileges or exemptions for themselves or others;
 - (iii) giving a reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position or influence of any party or person.
7. Finally, State employees should endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of their public trust.

What Are the Penalties?

Public Officers Law § 73 (18) governs penalties for violations. A CUNY employee who violates § 73(3) (a) of these rules, could be subject to a **civil penalty of up to \$40,000, plus**

disgorgement of all money received for such services, and be criminally charged with a Class A misdemeanor. Ignorance of the law is no excuse.

What if I Am Currently Engaged in Such Services?

I recommend that you **promptly** consult an attorney who is knowledgeable about New York State public employee ethics.

What if I Am Still Not Sure What To Do?

You should consult with your College ethics officer or the CUNY Office of the General Counsel (“OGC”) for further guidance. A list of College ethics officers and phone numbers is attached. To reach the OGC call (212) 794-5382; say you have an “expert testimony” question or you can reach us by email at ogc@mail.cuny.edu.

You may also go to the New York State Commission on Public Integrity Website for more information. Go to < <http://www.nyintegrity.org/>>.

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