

CODE OF CONDUCT

PREAMBLE

In recognition of the importance of employees to the mission of the Montana Legislative Branch of state government and of the value of excellence and professionalism in employee performance, the Legislative Council, with the concurrence of the Legislative Audit Committee and the Legislative Finance Committee, adopts this code to meet the requirements of 2-18-102(4), MCA, and to guide the conduct of employees of the Montana Legislative Branch in their service to the Legislature, legislators, and the public.

[NCSL]

Section 1. Policy and objectives. (1) This code is adopted in compliance with 2-18-102(4), MCA, which requires the Legislative Council to adopt model rules of conduct and additional rules appropriate to the specific circumstances of the Legislative Branch.

(2) Title 2, chapter 2, MCA, establishes specific standards of conduct and establishes penalties for violating those standards.

(3) The Legislative Council, under the authority granted in 2-18-102(4), MCA, to prescribe rules governing conduct of employees, may adopt standards that are more specific, extensive, or restrictive than the standards found in Title 2, chapter 2, MCA. Violation of Legislative Branch standards may result in disciplinary action.

(4) Information obtained as the result of reporting requirements or disclosure of conflict of interest requirements is public information and must be open for public inspection unless the Legislative Council determines that the right of individual privacy exceeds the public's right to know.

(5) It is the objective of this code to establish rules of conduct for employees of the Legislative Branch.

[Model rules]

Section 2. Definitions. In addition to the definitions found in 2-2-102, MCA, in this code, the following definitions apply:

(1) "Division director" means, as appropriate, the Executive Director of the Legislative Services Division, the Legislative Auditor, the Legislative Fiscal Analyst, the President of the Senate, or the Speaker of the House.

(2) "Employee" means a person employed by the Legislative Branch in a permanent, part-time, seasonal, or temporary capacity. The term includes individuals under contract with the Legislative Branch.

(3) "Immediate supervisor" means the person primarily responsible to exercise the charge, direction, and oversight of an employee within the organizational structure of the Legislative Branch.

(4) "Privatization" means contracting with the private sector to

provide a service normally or traditionally provided directly by an employee of an agency.

(5) "Voluntary termination" means severing of the employment relationship by an act of the employee, such as resignation from state government or retirement.

[Model rules]

Section 3. Applicability. This code applies to all legislative employees, regardless of their work assignment or responsibility. The variety of employee functions and of staffing structures within which legislative employees serve the Legislature requires that the obligations of this code be interpreted from a variety of perspectives.

[NCSL sec. 2 S of I]

Section 4. Professional conduct codes. This code supplements existing codes and professional standards to which legislative employees may already be subject. Obligations that employees have under these codes and standards, including various professional codes, are recognized and fully accepted. The professional codes and standards take precedence to the extent of any conflict with this code.

[NCSL sec. 3 S of I]

Section 5. Self discipline. This code is intended to support the sense of personal responsibility that legislative employees feel for their own actions. Reasonable people may disagree on the particulars of a code of conduct for legislative employees. The circumstances of life and work present conflicts and hard choices. Legislative employees have the ultimate responsibility to make the day-to-day judgments that are necessary for this code to guide their service to the Legislature.

[NCSL sec. 4 S of I]

Section 6. Public service. A legislative employee is a public servant. The purpose of an employee's work is to assist the Montana Legislature in promoting the common good of the citizens of Montana.

[NCSL Art. I, sec. 1]

Section 7. Service of the Legislative Branch -- restrictions. (1) The mission of the Montana Legislature is to exercise the legislative power of state government that is vested in the Legislature by the Constitution of the State of Montana. The mission of the Legislative Branch is to provide a consolidated administrative structure to support accomplishment of the mission of the Montana Legislature and of the several divisions of the Branch. Any action or inaction that could bring disrepute to or infringe upon the authority of the Legislative Branch or the principle of representative government conflicts with this service.

(2)(a) An employee may not:

(i) represent a legislator as an individual;

(ii) prepare speeches for individual legislators;

- (iii) prepare arguments for use in a voter information pamphlet; or
- (iv) draft a proposed statewide initiative.

(b) Subsection (2)(a) does not prohibit an employee from responding to legitimate requests for information that may or may not be used by a legislator for preparation of a speech or argument.

[(1) NCSL Art. I, sec. 2; (2) Rule C-3; (3) Rule C-2]

Section 8. A relationship of trust. A legislative employee stands in a relationship of trust, confidence, and responsibility to the Legislature and has the duty to act in a way that makes the employee worthy of the trust and confidence that the Montana Legislature places in its employees. Specific principles of trustworthiness are outlined in sections 9 through 21.

[NCSL Art. 1, sec. 3]

Section 9. Reporting requirements. (1) The Legislative Branch implements the employee reporting requirements contained in this section in order to monitor compliance with Title 2, chapter 2, part 1, MCA. The requirements cover reportable transactions with any person, vendor, customer, claimant, company, business, or organization affected or served by this Branch. Reportable transactions do not include private noncommercial or family transactions that do not give rise to an appearance of impropriety involving work responsibilities. To the extent that stricter standards apply to employees subject to applicable professional standards or codes of conduct the stricter standards have precedence over the requirements of this section.

(2) The purpose of gathering this information is to determine whether the activity, as provided in 2-2-104, MCA, is one "that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties or that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken".

(3) An employee of the Legislative Branch is required to report in a timely manner any of the following transactions that could have the appearance of violating 2-2-104, MCA, to the employee's immediate supervisor:

(a) the offer, receipt, or return of a gift of substantial value, as that term is defined in 2-2-102, MCA;

(b) a pattern of nonsubstantial offers of gifts, meals, educational material, educational activities, or awards;

(c) the rate of interest received for a loan if the rate is substantially lower than the commercial rate then currently prevalent for similar loans;

(d) compensation received for private services rendered if the rate substantially exceeds the fair market value of the services; or

(e) any personal transactions, such as swaps, purchases, sales, or loans, which involve the use of agency resources.

(4) An employee should maintain a personal log or other records

listing all gifts, entertainment, meals, or other gratuities from any of those entities listed in subsection (1), regardless of source or value. The records could be used by the employee if an issue arises concerning the propriety of the gratuity.

(5) An employee may not under any circumstances accept any gift, whether or not the value exceeds \$50, or another thing of nominal value from any person, group, or business related to the employee's employment when the acceptance may create an actual or a perceived conflict with the employee's public duty because it:

- (a) places or appears to place the employee under an obligation; or
- (b) is intended to influence the employee.

(6) An employee who is urged to depart from the impartial discharge of the employee's public duty by means of coercion, threat, or persuasion shall report the incident to the employee's immediate supervisor.

[Model rules]

Section 10. Honesty. A legislative employee shall demonstrate the highest standards of honesty and personal integrity in all of the employee's work for the Legislature and not lie, cheat, steal, or give less than full effort.

[NCSL Art. II, sec. 1]

Section 11. Discretion. (1) A legislative employee must be discreet in what the employee reveals about work done for and communications with a legislator.

(2) Written communications and written material prepared for a legislator are subject to the right to examine documents provided for in Article II, section 9, of the Montana Constitution and Title 2, chapter 6, part 1, MCA.

[(1) NCSL Art. II, sec. 2; (2) GP]

Section 12. Candor. A legislative employee shall render candid advice to legislators on matters of policy and procedure within the employee's areas of work responsibility.

[NCSL Art. II, sec. 3]

Section 13. Objectivity. (1) A legislative employee shall always strive to provide objective advice, information, and alternatives to legislators, independent of the employee's personal beliefs or interests or the interests of third parties. A legislative employee shall avoid activities that conflict with this objectivity or give the appearance of conflict.

(2) In order to prevent the impairment of objectivity, an employee may not:

- (a) use the employee's official capacity to influence, interfere with, or affect an election campaign or the results of an election;
- (b) engage in any campaign activity prohibited by 2-2-121(3), MCA;
- (c) act in a manner that suggests that any entity of the Legislative

Branch, as provided in 5-2-504, MCA, either supports a particular candidate or endorses the personal political opinions of an employee;

(d) engage in lobbying regulated by Title 5, chapter 7, MCA; or

(e) accept outside employment that conflicts or appears to conflict with legislative service.

[(1) NCSL Art. II, sec. 4; (2) selected portions Manual (LC)]

Section 14. Disclosure of conflicts of interest. The legislative Branch implements the following disclosure of conflict of interest requirements for employees in order to monitor compliance with Title 2, chapter 2, part 1, MCA.

(2) The purpose for creating disclosure procedures is to provide a standard procedure for Branch employees to comply with the various disclosure of conflict of interest requirements of Title 2, chapter 2, part 1, MCA.

(3) An employee shall disclose to the employee's immediate supervisor amounts earned from two separate, overlapping public employment positions in order to determine appropriate reimbursement or salary reduction, as required by 2-2-104, MCA.

(4) An employee shall disclose to the employee's immediate supervisor the fact that the employee holds a position as an officer or director in an organization in order to implement the provisions of 2-2-121, MCA, involving participation in a proceeding. An employee is not required to make a general disclosure of membership in or holding an office in an organization.

(5) An employee shall disclose a personal or private interest that may give an appearance of impropriety prior to participating in an official action, as required in 2-2-105, MCA. The employee shall make the disclosure to the employee's immediate supervisor prior to a proceeding when the employee has reason to know in advance that there may be a conflict, or the employee shall make the disclosure during a proceeding prior to taking official action.

(6) An employee is required to disclose to the employee's immediate supervisor any private interest, as that term is defined in 2-2-102, MCA, that creates or that gives the appearance of creating a conflict of interest with the employee's public duties.

[Model rules]

Section 15. Determination procedure. (1) An employee may request a determination from the division director as to whether a conflict of interest exists by:

(a) disclosing the employee's intent to acquire an interest in any business or undertaking that the employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the employee or the division;

(b) disclosing that upon the employee's voluntary termination of employment, the employee intends to obtain employment in the subsequent 12 months that may involve matters with which the employee was directly involved during employment, as described in 2-2-105, MCA; or

(c) disclosing that upon voluntary termination of employment, the employee intends to contract with or be employed by an employer who contracts

with the state or any of its subdivisions involving matters with which the employee was directly involved during employment. As provided in 2-2-201, MCA, a "former employee" does not include a person whose employment with the state was involuntarily terminated due to a reduction in force or other involuntary termination not involving violation of the provisions of Title 2, chapter 2, MCA.

(2) The provisions of 2-2-105, MCA, referred to in subsection (1)(b), prohibiting an employee who voluntarily terminates employment from obtaining certain other types of employment for 12 months following the end of employment do not apply to an employee who is involuntarily terminated due to privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other action by the Legislature.

(3) In adopting this code, the Legislative Council declares that absent a statement to the contrary by the employee and subject to the requirements of law, the individual privacy of an employee must be protected with respect to information that an employee provides in order to receive a determination from the division director.

[Model rules]

Section 16. Competence. A legislative employee should strive to acquire and maintain the knowledge and skills necessary to do the work that the employee is expected to do and to recognize when to seek assistance from others.

[NCSL Art. II, sec. 5]

Section 17. Diligence. A legislative employee should give a diligent effort to each work task, use available time in a productive and efficient manner, and complete work in the most timely fashion possible.

[NCSL Art. II, sec. 6]

Section 18. Fairness. A legislative employee shall treat all legislators with equal respect and provide services of equal quality to all legislators regardless of the legislator's political or religious beliefs, race, ethnic origin, sex, or physical ability.

[NCSL Art. II, sec. 7]

Section 19. Respect. A legislative employee should treat all fellow legislative employees with respect and appreciate the pressures they work under and the difficulty of some of the choices they must make.

[NCSL Art. III, sec. 1]

Section 20. Support and teamwork. A legislative employee shall support the efforts of fellow legislative employees to meet their obligations and perform their work and must be willing to operate as part of a team when appropriate.

[NCSL Art. III, sec. 2]

Section 21. Courtesy. A legislative employee must be courteous to

others with whom the employee interacts in the employee's work.
[NCSL Art. IV, sec. 1]

Section 22. Law-abiding employees. A legislative employee should be law-abiding. The employee shall encourage lawfulness in the activities of all participants in the legislative process.
[NCSL Art. IV, sec. 2]

Section 23. Legislative responsibilities. In placing their knowledge and skills at the service of the Legislature and in committing themselves to be employees of the Legislative Branch, legislative employees rightfully expect that the Legislature will clarify employee responsibilities and will support employees in fulfilling their obligations under this code of conduct.
[NCSL Art. V, sec. 1]

Section 24. Complaint investigation procedure. (1) A complaint or allegation that a Legislative Branch employee has violated the standards of conduct may be reported to the division director.

(2) The division director may name an individual or team to investigate the complaint or allegation.

(3) An employee who, through an internal investigation, is found to have violated Title 2, chapter 2, part 1, MCA, is subject to appropriate disciplinary action.

(4) As provided in 2-2-136, MCA, the Commissioner of Political Practices may recommend disciplinary action in addition to imposing an administrative penalty if, as the result of a complaint to that office, the Commissioner determines that a violation has occurred. The division director may accept, modify, or reject the Commissioner's recommendation. Any disciplinary action taken as the result of the Commissioner's recommendation must be in accordance with branch policy.

[Model rules]

Section 25. Limiting employment of related persons. (1) The Legislative Branch prohibits employment actions in addition to those listed in Title 2, chapter 2, part 3, MCA, for which it finds a conflict of interest exists in the employment of persons related or connected by consanguinity within the fourth degree or by affinity within the second degree. The employment actions include but are not limited to the authority to make final decisions on promotions, demotions, disciplinary actions, performance evaluations, reduction in force, selection for training opportunities or conference attendance, leave approval, or desirable working conditions (such as shifts, vacation periods, or physical working environment) and other supervisory activities.

(2) In order for a conflict of interest to exist, an employee must have final decision authority on the employment actions involving the related person. Unless specific types of employment actions that create a conflict

are identified and justified for job-related reasons in advance, employment of related persons as coworkers or in a direct or indirect supervisory relationship may not be prohibited.

(3) When an employment relationship creates a conflict of interest, a division director shall first attempt to reassign one of the related persons to resolve the conflict. If reassignment is not possible, one of the related persons may be laid off. Application of this rule may not violate the marital status discrimination prohibitions of the Montana Human Rights Act, Title 49, chapter 2, MCA.

[Model rules]

Section 26. Employee information. (1) Information on the code of conduct must be distributed to all Legislative Branch employees. The information must include a copy of this code, a pamphlet prepared by the Department of Administration, or a similar pamphlet summarizing Title 2, chapter 2, MCA, and this code.

(2) Other methods of distributing information include incorporating the topic into employee orientation sessions, training classes, meetings, newsletters and other employee publications, and electronic bulletin boards.

(3) Because a person under contract to the state is included in the definition of "public employee" in 2-2-102, MCA, the Legislative Branch should provide the information referred to in subsection (1) concerning rules of conduct to the person under contract.

(4) An employee supervisor or contract administrator will assure through appropriate means including evaluations and training that the information in this code is read and understood by persons covered by its provisions.

[Model rules]

APPENDIX A

Section 4. Professional conduct codes.

Interpretive guideline: Supervisors, colleagues, and others may assist an employee in determining a course of action. However, the responsibility for choosing a course of conduct at the point of decision, including whether to ask for guidance, is nearly always the employee's. An employee is ultimately accountable for the employee's choice.

Section 6. Public service.

Interpretive guideline: As employees of the government, employees have placed their talents and efforts in the service of the common good. As stewards of public resources, employees are responsible for ensuring that these resources are used to promote the public good, not their own private good.

Section 7. Service of the Legislative Branch -- restrictions.

Interpretive guideline: The mission of legislative employees is to support the Montana Legislature in making laws and allocating public resources for the common good of the people of Montana. The people of Montana have delegated this power to the Legislature. Legislative employees have an obligation to be loyal to the Legislature as an institution. An employee also has an obligation to follow the law. The principles articulated in this section do not suggest that an employee fulfilling that obligation may not identify shortcomings or deficiencies within the institution.

Section 8. A relationship of trust.

Interpretive guideline: Employees stand in a special relationship to legislators. As employees, they are entrusted with various tasks that give them an important role in the process by which decisions for the common good are made by the Legislature. In performing those tasks, employees are expected to give the Legislature the full benefit of their knowledge and skills without usurping the authority to make legislative decisions, which has been exclusively delegated to legislators. To be worthy of this special relationship of trust and to be trustworthy, a legislative employee must meet certain obligations to legislators, colleagues, and the general public.

Section 10. Honesty.

Interpretive guideline: A trustworthy employee does not steal from the employer by taking public property, by using public property or employment for personal gain, or by failing to give full effort for pay received. A

trustworthy employee does not lie to the employer. Dishonesty in any aspect of an employee's life calls into doubt the employee's honesty in work and can also harm the Legislature's reputation.

Section 11. Discretion.

Interpretive guideline: Discretion includes knowing when information is confidential and treating it as such, when carrying out a request must necessarily involve revealing some information, and when not to speak about nonconfidential matters both within and outside the legislative context. Because many legislative employees work for more than one legislator, including working on a single project or piece of legislation for legislators with opposing objectives, it can be difficult to meet this obligation at times. Also, the expectations of leaders that they be kept informed can place employees in difficult situations. To minimize these difficulties, legislators should as clear as possible regarding expectations and sensitive to the legal requirements under which an employee's may have an obligation either to maintain confidentiality or provide information.

Section 12. Candor.

Interpretive guideline: Candor is the full sharing of one's knowledge, in the form of information and advice, with a legislator who needs it in order to make an informed decision. The ability of a legislator to make a good decision may be lessened if a employee fails to give the legislator the full benefit of the employee's expertise. Although the obligation to be candid is clearest when a legislator asks for information or advice, it may also apply when an employee is not asked. Great care needs to be exercised when advice or information has not been asked for, but when relevant knowledge should be offered. Once the offer is made, an employee does not have a duty to advocate or seek another forum, unless advocacy is the employee's specific responsibility. An employee's duty to give advice and information to a particular legislator depends on who the employee specifically works for. However, regardless of this circumstance, an employee is obliged to accurately inform any legislator of what services the legislator can expect from the employee. The obligation to be candid may give rise to tension with the obligation to be discreet, but the obligations do not contradict each other. The distinction is that in being candid, an employee gives each legislator who can request the employee's services the full benefit of the employee's broad disciplinary knowledge and skills; in being discreet, an employee holds communications with legislators in confidence, when appropriate.

Section 13. Objectivity.

Interpretive guideline: It is not expected that an employee will have no personal beliefs regarding public policy. What is expected is that in doing

the employee's job, the employee will not let those personal beliefs be limiting, but rather will be open to alternatives and committed to being comprehensive in presenting information and providing support. Certain activities can make it difficult for an employee to be objective or can give the appearance that the employee is not objective. In public service, this appearance can undermine public confidence in the Legislature and compromise the effectiveness of employees. Because it can be difficult to determine which activities give the appearance of conflicting with objectivity and because reasonable people may disagree, employees and their legislative employers have the obligation to carefully assess the effect of such activities as accepting gifts or favors from persons with an interest in the legislative process, of taking an active or leadership role in an organization that attempts to influence the Legislature, and of entering into conversation about potential employment with an entity that has an interest in the legislative process. Similarly, employees and their legislative employers shall evaluate any outside employment by full-time legislative employees for its potential to compromise objectivity as well as to weaken diligence.

Section 16. Competence.

Interpretive guideline: To support the Legislature in its mission, employees must be competent. An employee needs to be aware of the kind and degree of expertise that the employee possesses, to be forthright with legislators about what the employee can do, to know when to seek assistance, and to take every opportunity to continue to learn.

Section 17. Diligence.

Interpretive guideline: Diligence is the application of full effort to the performance of one's work. The demands of the legislative process often make it difficult for an employee to be as careful and thorough as the employee would like to be in completing a task. It may be appropriate to inform a legislator of the constraints of time or resources and to discuss what can reasonably be accomplished. The obligation of diligence requires that the employee do the employee's best in the time and with the resources available.

Section 18. Fairness.

Interpretive guideline: By virtue of a legislator's office, a legislator deserves respectful and dignified treatment by all legislative employees. All legislators who have the right to ask for and receive services from an employee expect that a diligent effort will be forthcoming and will not be lacking due to the legislator's political or religious beliefs, race, ethnic origin, sex, or physical ability.

Section 19. Respect.

Interpretive guideline: Because legislative employees are in the best position to understand the circumstances of other legislative employees and to know the obligations they are under, they have a strong obligation to be considerate of each other.

Section 20. Support and teamwork.

Interpretive guideline: For an employee to fail to support a colleague or to work against a colleague's efforts to perform the colleague's work is to lessen the ability of the employees as a whole to perform their work for the Legislature. Employees often work on opposite sides of an issue or for legislators who oppose each other, but this does not require that they seek to harm a colleague's reputation, question a colleague's motives, or affect the terms of a colleague's employment. Because employees depend on each other for assistance and support, the obligations to be honest, discreet, candid, objective, competent, diligent, and fair apply in their relationships with each other as well as in their relationships with legislators.

Section 21. Courtesy.

Interpretive guideline: Some legislative employees are hired to provide direct services to the public; many others will from time to time have direct contact with the public. As government employees, legislative employees shall respect the need of members of the general public, the press, members of other governmental agencies, and lobbyists to have information about the Legislature. They shall, subject to legal and policy guidelines, attempt to meet that need. If an employee does not have what is requested, the employee shall help citizens find the information or assistance they seek.

Section 22. Law-abiding employees.

Interpretive guideline: A legislative employee has the same obligation as any citizen in this regard. However, because of the position the employee holds as the employee of a lawmaking organization, the employee is subject to a high standard of knowledge and conduct. If an employee is directly aware of unlawful activities that involve the legislative process, the employee must pursue resolution of the issue through appropriate channels, subject to other codes and obligations.