

# ETHICS OFFICER ROUNDTABLE

May 19, 2015

Indiana Office of Inspector General

# HEA 1002

Effective July 1, 2015

**Conflicts of  
Interest**

**Post-  
Employment**

**Use of State  
Property**

# Conflict of Interest

## Conflicts

Outside  
Employment

IC 4-2-6-5.5

Decisions  
&  
Votes

IC 4-2-6-9

Contracts

IC 4-2-6-10.5

# Outside Employment (IC 4-2-6-5.5)

A large red prohibition sign (a circle with a diagonal slash) is overlaid on the text. The text is in a dark red color.

Approval by  
Appointing  
Authority  
or  
Ethics officers

A large green checkmark is overlaid on the text. The text is in a black color.

Approval by  
State Ethics  
Commission

# Outside Employment (IC 4-2-6-5.5)

## Old Text

- (b) A written advisory opinion issued by the commission or the individual's appointing authority or agency ethics officer granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

## New Text (after 7.1.2015)

- (b) A written advisory opinion issued by the commission ~~or the individual's appointing authority or agency ethics officer granting approval of~~ **stating that an individual's outside employment does not violate subsection (a)(1) or (2)** is conclusive proof that ~~an individual is not in violation of~~ **the individual's outside employment does not violate** subsection (a)(1) or (a)(2).

# CONFLICTS OF INTEREST



# Conflict of Interest; Decisions and Votes (IC 4-2-6-9)

- ❑ In addition to participating in decisions or votes themselves, officers, employees, and special state appointees are now also prohibited from participating in any matter *related* to that decision or vote.
- ❑ A state officer, employee, or special state appointee has a financial interest in a business organization in which he or she serves as a *member*.

# Conflict of Interest; Decisions and Votes (IC 4-2-6-9)

## Conflict of Interest Subsection (a) Before 7.1.2015

(a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter: . . .

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

## Conflict of Interest Subsection (a) After 7.1.2015

(a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, **or matter relating to that decision or vote**, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter: . . .

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, **a member**, a trustee, a partner, or an employee.

# Conflict of Interest; Decisions and Votes (IC 4-2-6-9)

- ❑ When a state officer, employee, or special state appointee identifies a potential conflict, he or she must notify their agency appointing authority **and** agency ethics officer **in writing**.
- ❑ A state worker with a conflict can now seek a formal advisory opinion from the Commission **or** file a written disclosure statement with the Commission.

# Conflict of Interest; Decisions and Votes (IC 4-2-6-9)

## Subsection (b) Before 7.1.2015

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission . . . .

## Subsection (b) After 7.1.2015

- (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and **ethics officer in writing and do either of the following:**
- (1) Seek an advisory opinion from the commission . . . OR
  - (2) **File a written disclosure statement with the commission . . . .**

# Disclosure requirements outlined in IC 4-2-6-9(b)(2)

A disclosure under this provision must be filed with the Commission and:

1. Provide details of the conflict of interest;
2. describe and affirm implementation of a screen established by the ethics officer; and
3. be signed by the individual with the conflict AND the agency ethics officer;

# Disclosure requirements outlined in IC 4-2-6-9(b)(2)

4. include a copy of the disclosure provided to the appointing authority; and
5. be filed no later than seven (7) days after the conduct that gives rise to the conflict.

➤ **NOTE:** The disclosure will be posted on the OIG's website.

# Conflict of interest; Contracts (IC 4-2-6-10.5)

- Still generally prohibits financial interest in a contract made by a state agency
- New language provides clarification regarding steps required for a state employee, officer, or special state appointee to have a financial interest in a contract

# Prohibition of Financial Interest in a Contract (IC 4-2-6-10.5)

- An employee, officer, or special state appointee is prohibited from having a financial interest in a contract made by an agency
  
- ***unless*** the employee, officer, or special state appointee:
  - (1) does not participate in or have contracting responsibility for the contracting agency; and
  - (2) files a written statement with the inspector general before entering into the contract.

# Prohibition of Financial Interest in a Contract (IC 4-2-6-10.5)

- **NOTE:** The language that dealt with the discovery of a violation of this subsection that required a disclosure and termination of the interests has been removed.

# Prohibition of Financial Interest in a Contract (IC 4-2-6-10.5)

- ❑ Disclosure criteria found in IC 4-2-6-10.5 (c):
- ❑ Disclosure must include:
  1. an affirmation that the employee does not have contracting responsibility and that the contract was made after public notice and, if applicable, competitive bidding
  2. a statement making full disclosure of all related financial interests in the contract and that the contract can be performed without compromising official duties

# Prohibition of Financial Interest in a Contract (IC 4-2-6-10.5)

- Disclosure criteria (continued)

3. if the contract is for professional services, there must be an affirmation from the agency appointing authority that no one from the agency is available to perform the services as part of their regular duties

# POST-EMPLOYMENT

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# Post-Employment

Definition of employer: IC 4-2-6-1(a) (10)

- IC 4-2-6-1(a)(10) no longer excludes customers or clients of self-employed individuals, sole proprietorships, or professional practices from the definition of employer. Therefore, the definition now encompasses any person (including a customer or client) from whom an employee or officer receives payment.

# Post-Employment Rule - Definitions

## “Employer” Definition Before 7.1.2015

“Employer” means any person from whom a state officer or employee or the officer’s or employee’s spouse received compensation. For purposes of this chapter, a customer or client of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an employer.

## “Employer” Definition After 7.2015

“Employer” means any person from whom a state officer or employee or the officer’s or employee’s spouse received compensation. ~~For purposes of this chapter, a customer or client of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an employer.~~

# Post-Employment Rule (IC 4-2-6-11)

## Independent contractors

IC 4-2-6-11(i):

Language is still there, but it essentially is cancelled out by the subsequent change to the definition of the term employer.

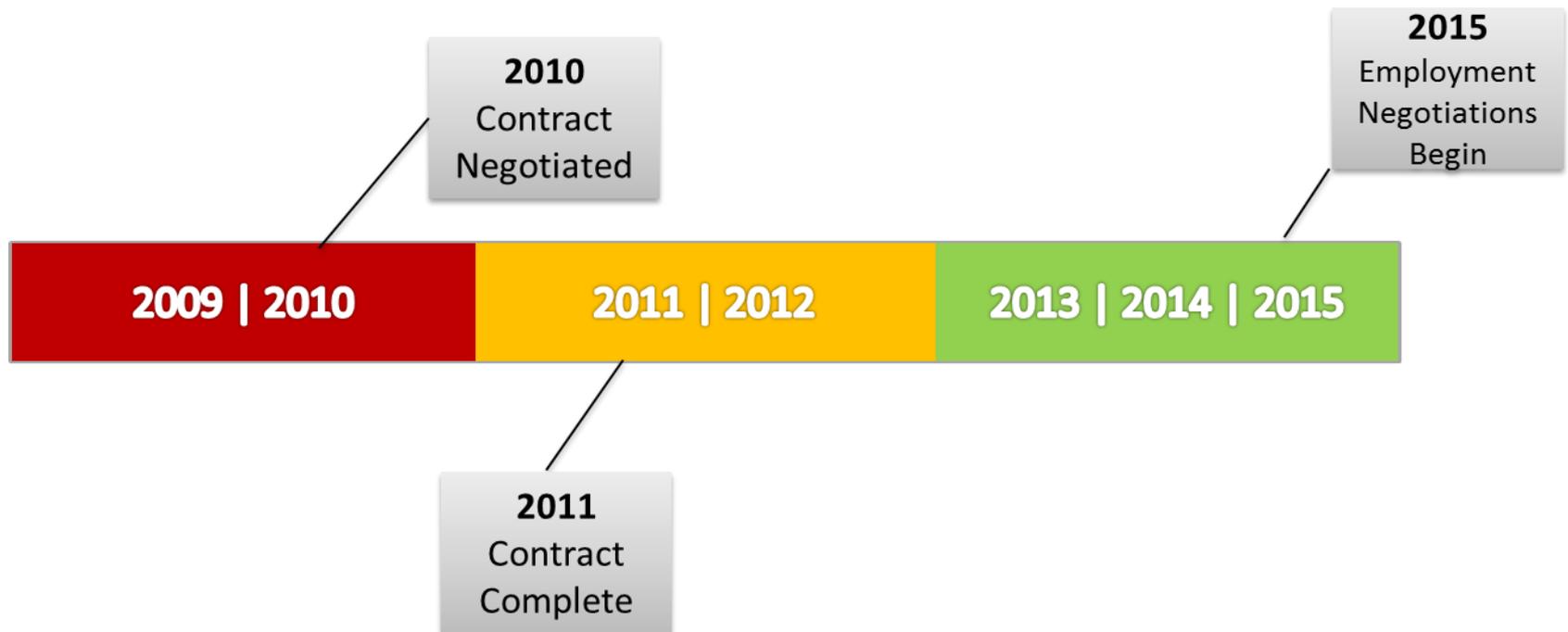
# Post-Employment Rule (IC 4-2-6-11)

## □ Overview of Changes:

1. Two-year exception to the contracting provision of the cooling off period
2. Application of cooling off period to ALJs
3. Sole Proprietorship / Professional Practice Disclosure Requirement
4. Waiver Requirements

# Post-Employment Rule (IC 4-2-6-11)

Two Year Exception: The cooling off period will **not** apply to a state worker if 2 years have passed since the completion of a contract that may have negotiated or administered.



# Post-Employment Rule (IC 4-2-6-11)

## ALJs

IC 4-2-6-11(h) now provides that the cooling off period applies to an employee, officer, or special state appointee who made decisions as an administrative law judge (ALJ) or presided over information gathering or order drafting proceedings that directly applied to the employer or its parent/subsidiary in a material manner.

WAIVERS



# Post-Employment Waivers



## New waiver requirements overview

1. **Signatures**
2. **Supporting information**
3. **File with Commission for review and approval**
4. **Timing**

# Post-Employment Waivers

## 1. Signatures

A waiver must be signed by a:

- ❑ State officer or appointing authority **AND**
- ❑ The agency ethics officer (attesting to form)

# Post-Employment Waivers

## 2. Supporting information:

A. Did the employee's job duties involve substantial decision making over policies, rules, or contracts

B. Nature of duties for prospective employer

C. Whether the prospective employment will involve substantial contact with the former agency and whether the contact will involve matters in which the agency has discretion to make decisions based on the work product of the employee.

# Post-Employment Waivers

## 2. Supporting information for P-E waivers (continued)

- D. Whether the prospective employment may be beneficial to the state or the public, specifically stating how it is consistent with the public interest
- E. The extent of economic hardship if the waiver is denied

# Post-Employment Waivers

## 3. File with Commission for review and approval

- ❑ Waivers must be filed and presented to the commission by the state officer or appointing authority authorizing the waiver.
- ❑ The Commission will conduct an administrative review and will approve it only if the requirements are satisfactorily articulated.

# Post-Employment Waivers

## 4. Timing

- Waivers are limited to an employee or a special state appointee who obtains the waiver **before** engaging in the conduct that would give rise to a violation of subsection (b) or (c).

# USE OF STATE PROPERTY



# Use of State Property

- Codified in IC 4-2-6-17 and IC 4-2-7-5
- Commission must approve a policy for limited use of state property/resources
- Cannot authorize such use for a “political purpose”
- Exceptions for state officers

# Use of State Property

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## Political Purpose

“Political purpose” does not include the handling or disposing of unsolicited political communications (i.e., the receipt of a political email or a political phone call)

# Model Policy for Limited Use of State Resources

## Important:

- If your agency does not have a Commission- approved limited use policy by July 1, your agency employees, special state appointees will be in violation of IC 4-2-6-17 if they use state property/resources for **any purpose** that is not official state business.
- Any old limited use policies your agency may have had will be ineffective after July 1<sup>st</sup> because it will not meet requirement in IC 4-2-6-17 that such a policy be approved by the Commission

# ETHICS TRAINING

Coming Summer 2015

# Ethics Training

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- The two-year ethics training course for 2014/15 will be rolled out this summer
- Ethics Officers will be receiving communications regarding enrollment of all special state appointees

# Ethics Training

- OIG will need rosters with names of all special state appointees on each of your agency's commissions/boards
- Ethics Officers will be agency point of contact for ethics training
- Work with OIG to ensure all state employees, special state appointees, and state officers within your agency complete the training

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