SUMMARY OF FULL REPORT*

REPORT OF THE SPECIAL ETHICS COUNSEL TO THE GOVERNOR OF THE STATE OF NEW JERSEY

ETHICS REFORM RECOMMENDATIONS FOR THE EXECUTIVE BRANCH OF NEW JERSEY GOVERNMENT

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***The Full Report, with all appendices, is available from the Office of the Governor and available on-line at http://www.nj.gov/ethics_report.pdf**

Dedication

This Report is dedicated to all those who labor in the trenches of public service. Our research, interviews, and analysis of the ethics audit responses left us with the indelible impression of firm resolve on the part of State employees to serve the public honestly and faithfully. More than anything, we must reinforce their resolve by demonstrating that every level of government supports their efforts.

INTRODUCTION

> *Our faith in government has been shaken. But this moment in history has given us the opportunity to chart a new course. Together, we have begun to restore faith, integrity, and hope to our government. . . . There is nothing more important to our democracy than the trust of the citizens. And when that trust wavers, the question is not whether we should act . . . but how much we can achieve.*
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> —— Acting Governor Richard J. Codey,
> State of the State Address
> (January 11, 2005)

On November 17, 2004, Acting Governor Richard J. Codey appointed us Special Ethics Counsel, charged with the responsibility of recommending ethics reforms for the Executive Branch of New Jersey's Government. We commend Governor Codey for his leadership and courage in giving us so significant a mandate and we thank him for this opportunity to serve the State.

Although our mandate is broad, it is not all-encompassing. Our work is part of a larger mosaic of effort by public and private-sector parties. An effective system of advancing integrity in government requires a tripartite approach. The three major features recognized in most jurisdictions are: (1) the regulation of legislative and executive lobbying; (2) rules of conduct for government officials; and (3) campaign and finance practices. Our mission is limited to the second element, the rules of conduct for members of the Executive

Branch of State government and its independent authorities. The other two pillars of integrity must be strengthened as well.

In pursuit of our mission to examine the rules of conduct governing State employees, we thoroughly reviewed the State's existing ethics and conflicts laws. We also conducted an extensive audit of ethics programs in the Executive Branch agencies, departments, and independent State authorities. In addition, we engaged in a comparative review of other state and federal ethics models, conducted numerous interviews, and solicited and reviewed public comment. Our research, interviews, and analysis of the ethics audit responses left us with the indelible impression of firm resolve on the part of State employees to serve the public honestly and faithfully. They deeply resent any outside influences on the performance of their duties. More than anything, we must reinforce their resolve by demonstrating that every level of government supports those in the trenches of public service.

Our Report proceeds on the simple principle that public office is a public trust. Recent scandals have shaken that trust. Yet, as Governor Codey has made clear, this unique moment in New Jersey's history has provided the opportunity to chart a new course that transcends partisanship and recaptures the promise of our great State.

The public wants and deserves assurances that it can rely on the integrity of its elected and appointed leaders. Citizens want and deserve evidence that leaders are making an ethical culture the central hub of governance. They want leaders who will guide managers at all levels to do the right thing when faced with tough decisions. They want to see less partisan politics and more public interest politics.

The Report that we issue today sets forth a series of sweeping recommendations that include the creation of a newly-empowered and independent watchdog, to be known as the State Ethics Commission, significant enforcement and compliance checks, stringent penalties for transgressors, mandatory ethics training for all State officials and employees, routine ethics auditing, more stringent anti-nepotism laws, more effective post-employment restrictions, transparency in the contracting process, a zero-tolerance policy on the acceptance of gifts, and the imposition of the ethics laws upon gubernatorial transition teams. The public interest deserves no less.

Throughout, our recommendations aim to promote transparency and accountability in all aspects of government activity in order to better monitor ethical performance from top to bottom. As Justice Brandeis observed, "Sunlight is said to be the best of disinfectants." Louis Brandeis, Other People's Money 62 (Nat'l Home Library Found. ed. 1933).

Moreover, experience teaches that it is not enough to impose strictures on State employees. Most ethics violations do not occur without the participation and consent of third parties. Hence, we have prepared and appended to our Full Report, a Business Ethics Guide for third parties that do business with the State. We recommend that certification of compliance with its terms be required of all who do business, or hope to do business, with the State.

We are not so naive as to believe that our recommendations will change human nature. No regulation will deter a person determined to challenge the public interest and public trust. Still, formal rules that establish clear standards regarding performance and punishment are essential to communicate that transgressions will not be tolerated and that ethics is everyone's business.

Thomas Jefferson warned, "In every government on earth there is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover and wickedness insensibly open, cultivate, and improve. Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories." Thomas Jefferson, Notes on the State of Virginia (Merill D. Peterson, ed., Library of Am., Literary Classics of the United States 1984) (1781-1782). Although our recommendations are

significant, without a commitment that survives the current climate of ethics reform all that we will have succeeded in doing is putting more laws on the books. Ultimately, it is human oversight, rooted in leadership from the top and an unrelenting pledge to good government, that serves as the most effective and enduring check.

Implementing the systemic changes that we recommend can help to set the stage for a renewed partnership of government, its employees, and the public. By rebuilding the public's trust, we can, in the words of Governor Codey, "show government as a force for compassion and a beacon of hope." Restoring a sense of nobility and accountability to government service is vital to this enterprise. When public employees come to believe that they and their work are unseen or unimportant, a window of vulnerability opens. We are convinced that the recommendations in our Report and the continuing leadership that this initiative represents have the potential to close or at least narrow that window and open a door back to the future, so that New Jersey can reclaim its great promise.

SUMMARY OF PRINCIPAL RECOMMENDATIONS

1. CREATE AN ENTIRELY NEW, INDEPENDENT AND PROACTIVE ENFORCEMENT AGENCY, CALLED THE "STATE ETHICS COMMISSION" (COMMISSION).

A. Make The State Ethics Commission An Independent Watchdog.

The new State Ethics Commission should replace the existing Executive Commission on Ethical Standards (ECES). To ensure maximum independence:

- The State Ethics Commission should be bipartisan and, ultimately, be composed entirely of seven public members.
- Commission members should serve staggered four-year terms.
- The Commission's Chair and Vice-Chair should be elected by its members to two-year terms.

Governor Codey has proposed legislation that would transform the newly-named State Ethics Commission from a nine-member body, with seven members from the Executive Branch and two public members, into a seven-member body, with three members from the Executive Branch and four public members. Not more than two of its public members would be of the same political party, and a Chair would be selected from among its public members. Several of our recommendations are embodied in that Bill. Given the strength of the Governor's commitment to ethics reform, this movement toward change should pave the way for the implementation, over time, of an entirely independent body

composed of seven public members, while also assuring a smooth transition toward that end.

B. Vest The State Ethics Commission With Much Greater Enforcement Powers Than Those Possessed By The Existing Executive Commission On Ethical Standards.

Presently, many of the State's ethical strictures are well-intended, but toothless. The new State Ethics Commission should be vested with vigorous enforcement mechanisms, as well as with the responsibility for undertaking routine ethics audits and for implementing mandatory ethics training programs. It should have the authority to impose a broad range of significant penalties for non-compliance and ethics violations. The range of penalties should include:

- Removal from office.
- Suspension from office.
- Demotion.
- Public censure.
- Reprimand.
- Restitution of any pecuniary benefits received as a result of an ethics violation.
- Mandatory late filing fees (up to $50 per day) for failure to file required disclosure and authorization forms in a timely manner.
- Mandatory civil penalties (up to $10,000 per violation) for violations of post-employment restrictions.

Further, the Commission's jurisdiction should be expanded to include transgressors who leave State service, provided the Commission's investigation begins within two years past the date on which the alleged violation has been committed. That expanded jurisdiction would prevent State employees from escaping liability for ethical breaches simply by leaving State employ.

Finally, the Commission will have to coordinate its work closely with the Inspector General's Office, the State Auditor's Office, the State Commission of Investigation, and the Office of Government Integrity in the Attorney General's Office.

C. Require The State Ethics Commission To Conduct Mandatory Ethics Training For All State Employees.

The State Ethics Commission should be staffed with a full-time Training Officer with adequate support personnel, and charged with the responsibility of creating, coordinating, and refining comprehensive mandatory ethics training programs, both in-person and on-line. Each agency or department's Ethics Liaison Officer (ELO) should be required to coordinate with the Training Officer to facilitate the ethics training programs that the Training Officer develops.

Mandatory ethics training programs should include:

- Annual briefings and routine refresher courses on

ethics and standards of conduct for all State employees and officers.[1]

- Annual financial-integrity training for all State officers, board members of all State entities, and employees vested with procurement-related authority.

D. Enable The State Ethics Commission To Perform Regular And Systematic Ethics Audits And Monitoring For Ethics Compliance.

The State Ethics Commission should be staffed with a full-time Ethics Compliance Officer and adequate support personnel to ensure that, in each agency, all required employee disclosures are monitored for compliance and all ethics codes and notices are distributed to and acknowledged by all employees. Duties of the Ethics Compliance Officer should include:

- Tracking compliance on matters including outside employment, business activities, gifts, financial disclosures, contacts by legislators, lobbyists, or governmental-affairs agents, procurements and contracts, and attendance at outside events.

E. Coordinate The Duties Of The State Ethics Commission With Those Of Other Agencies Charged With Fighting Fraud, Waste, And Ethical Misconduct In Government.

The Commission should routinely communicate and coordinate its efforts with those of the State Auditor, the Inspector General, the State Commission of Investigations, and the Office

[1] References throughout this Summary to State "officer" or "employee" refer to any person holding office or employment in any State agency, i.e., any principal department, board, commission, authority, State college or university and any other instrumentality, created by or allocated to a principal department.

of Government Integrity of the Attorney General's Office. Just as there are joint task forces of state and federal agencies to fight crime or pollution, there can and should be a joint task force of the several agencies to fight fraud, waste, and ethical misconduct in government.

F. Improve Access To Ethics Advice and Information.

To improve access to ethics advice and information, we recommend that:

- A new, toll-free, confidential reporting hotline be made available to all State employees and to the general public, for purposes of voicing concerns, asking questions and making complaints.

- All financial disclosure forms be viewable on the Commission's website.

2. ENACT A UNIFORM ETHICS CODE, APPLICABLE TO ALL STATE EMPLOYEES, TO CONSOLIDATE THE STATE'S SCATTERED ETHICS LAWS INTO A SINGLE ACT.

Currently, State ethics restrictions are set forth in a multitude of separate codes and in the regulations of a myriad of diverse agencies. Uniform baseline standards of conduct should be enacted and made applicable to all State employees. Our proposed Uniform Ethics Code, appended to our Full Report, simplifies, clarifies, and modernizes the otherwise disparate governing strictures. Our recommendation requires:

- The State Ethics Commission to promulgate a single Code of Ethics binding upon the Executive Branch, that adopts all applicable provisions of our proposed Uniform Ethics Code, as supplemented by relevant

agency-specific strictures.

3. IMPLEMENT A PLAIN LANGUAGE ETHICS GUIDE THAT CAN BE EASILY UNDERSTOOD BY ALL STATE EMPLOYEES AND THE PUBLIC.

A Plain Language Ethics Guide should be adopted to explain clearly and plainly to all State employees and to the public the ethical standards and requirements that must be met by every State employee. We have drafted, and appended to our Full Report, a Plain Language Ethics Guide that reflects the current New Jersey Conflicts of Interest Law (Conflicts Law), N.J.S.A. 52:13D-12 to –28.

We recommend that:

- Every State employee be required to certify that he or she has read the Guide, understands it, and vows to uphold its terms. With that requirement in place, no employee will ever be able to use ignorance of the law as a viable defense to an ethics violation.

4. IMPLEMENT A BUSINESS ETHICS GUIDE THAT IS BINDING ON THIRD PARTIES THAT DO BUSINESS WITH THE STATE.

It is not enough to impose strictures on State employees. Most ethics violations do not occur without the participation and consent of third parties. Hence, we have drafted, and appended to our Full Report, a plain language Business Ethics Guide for third parties that conduct business with the State. Currently, there are no penalties for businesses that commit ethics violations.

Our recommendations require that:

- All persons who do business with the State certify, in writing, that they understand the rules of the Business Ethics Guide and that they are in compliance with those rules.

- A certification of compliance with the Business Ethics Guide be a prerequisite for the submission of any bid to do business with the State. Penalties for noncompliance would include the disqualification of the bid.

5. PROVIDE LEADERSHIP FROM THE TOP.

The Governor should set the appropriate tone and lead by example and initiative, to avoid even an appearance of impropriety.

Toward that end, we recommend that:

- The Executive Director of the State Ethics Commission meet with every new Cabinet member shortly after inauguration.

- The Executive Director of the State Ethics Commission appear before the Cabinet at least once each year to remind all members of the ethics strictures.

The Governor's Code of Conduct, promulgated by an independent advisory panel pursuant to Executive Order 77 (McGreevey 2002), contains thorough and significant strictures, consistent with the core premise that leadership and direction must come from the top. The Governor's Code of Conduct is appended to our Full Report.

6. CLOSE THE REVOLVING DOOR OF UNDUE INFLUENCE BY ADOPTING RIGOROUS POST-EMPLOYMENT RESTRICTIONS AND EFFECTIVE FOLLOW-UP PROCEDURES.

Presently, a general post-employment restriction prohibits

a former State officer or employee, or special State officer or employee, from representing or acting on behalf of a party other than the State in connection with any matter in which the employee was substantially and directly involved during his or her State tenure. That is a lifelong restriction, but the only enforcement mechanism is a disorderly-persons penalty, which has never been imposed.

To construct laws that are stronger, realistic and readily enforceable, we recommend:

- A new, explicit lifetime ban on all former State officers' and employees' use of confidential information.

- A general two-year post-employment restriction prohibiting a former State employee from representing an entity on any matter that he or she was substantially and directly involved in while in State service. That ban would allow highly qualified individuals to enter government service with the expectation that they will be able to continue to earn a living after they leave State employ. Consistent with the experience of other jurisdictions, after two years, former State employees are apt to be sought by a new employer for their expertise, rather than for their ability to influence government officials.

- A new one-year ban on "side-switching," to apply to designated State officers, heads, deputy heads and assistant heads of principal departments, boards, commissions, and authorities. That ban would prohibit such an employee, for one year after leaving State service, from representing anyone on any matter before the agency in which he or she was employed. Our investigation revealed the significant concern about the appearance of impropriety that arises when a former senior official appears before his or her agency shortly after leaving government service.

- Greatly enhanced penalties for violating post-employment restrictions, applicable to former employees and their new employers. Those penalties should include fines of up to $10,000 per offense.

7. STRENGTHEN ANTI-NEPOTISM LAWS.

The Legislature's 2004 enactment prohibiting certain relatives of State officials from serving in State government positions, N.J.S.A. 52:14-7.1, was a step in the right direction. Currently, however, there are no enforcement mechanisms or penalty provisions in the statute to ensure compliance. Therefore, we recommend the following:

- Make N.J.S.A. 52:14-7.1 part of the Conflicts Law, giving the State Ethics Commission the authority to impose a broad range of penalties for violations.

- Prohibit State officers and employees from participating in decisions to hire, retain, promote, or determine the salary of any member of their immediate family, and any cohabitant or person with whom the officer or employee has a dating relationship.

- Prohibit every State officer and employee from supervising or exercising authority over immediate family members, cohabitants, or persons with whom the officer or employee has a dating relationship.

Those recommended strictures are delineated in our proposed Uniform Ethics Code.

8. IMPOSE THE ETHICS LAWS ON ADMINISTRATION TRANSITION TEAMS.

The ethical responsibilities and obligations of a newly-elected State administration begin not on a governor's inaugural

day, but on the very first day that a transition team is formed. Policies and operational and personnel decisions are forged during a transition. Consequently, the public trust is involved. Currently, transition teams are not subject to the ethics laws applicable to other Executive Branch employees. To increase public confidence, we recommend that all full-time, paid transition team members:

- Be subject to the constraints of the ethics laws immediately upon appointment, and that their salaries and sources of income be fully disclosed.

- Be notified of the ethics and conflicts laws and receive ethics training immediately upon appointment, and that they be required to certify, in writing, that they are in compliance with those strictures, including all financial disclosure requirements.

We also recommend that the Gubernatorial Transition Act, N.J.S.A. 52:15A-1 to -5, be amended to subject full-time, paid transition team members to the Conflicts Law.

9. ENSURE TRANSPARENCY AND PROMOTE INTEGRITY IN THE CONTRACTING PROCESS.

With certain amendments to expand its scope, we recommend that the Karcher-Scutari Bill, S. 2194, 211th Leg. § 2 (N.J. 2004), be enacted to implement the State Commission of Investigation's (SCI) June 2004 recommendation that, once a matter has entered the procurement process, any contact related to the procurement between State employees and representatives of active or prospective State vendors be memorialized in

writing, so that a public record can be maintained to ensure the transparency of such contacts. In order to close the circle of improper influences in the bidding process, we recommend that all intra-government contacts with State procurement officers also be memorialized in writing.

10. ADOPT A ZERO-TOLERANCE POLICY ON GIFTS.

Last year, the Legislature passed a law allowing Executive Branch officials to receive up to $250 total value in gifts, annually, from governmental affairs agents, thereby conflicting with current ECES guidelines. To eliminate confusion and to render even more rigorous the gift ban, we recommend:

- A new, simple, flat ban, prohibiting all Executive Branch employees from accepting any and all gifts or other things of value from any source other than the State for any matter related to their official duties. That zero-tolerance policy will establish a clear, bright-line standard that is easy to apply and helps to avoid even the appearance of impropriety.

OVERVIEW OF OUR FULL REPORT

Our Full Report consists of three chapters and a comprehensive Appendix. Chapter One provides an overview of our methodology, a history of ethics reform in New Jersey, and a comprehensive discussion of existing Executive Branch ethics programs and strictures. Chapter Two contains a detailed

analysis of the results of our Ethics Audit. Chapter Three provides a detailed consideration of each of our recommendations, together with national comparisons.

Our appendices include: (1) our proposed Uniform Ethics Code; (2) our recommended Plain Language Ethics Guide; (3) our proposed Business Ethics Guide; (4) our Ethics Audit survey; (5) ethics training prototypes; and (6) various compilations of State and national data relevant to the task of ethics reform.

CONCLUSION

A fundamental principle of democracy is that a representative government must hold the public's trust. All government exists by the consent of the governed. Scandals undermine the public's trust in the integrity of government and threaten the fundamental premise of democracy.

Today in New Jersey, trust has been broken and, as a result, the actions of political leaders now face more skeptical investigation than ever before. How do we restore trust? Unethical or improper behavior on the part of State officials or employees is the exception and not the rule; nevertheless, from time to time, we are reminded that our laws and regulations may not be adequate to the times and circumstances.

The best answer to potential ethical problems in government is honest people in a proper and ethical environment. Still, formal regulation is required. As part of a comprehensive

approach, clear rules regarding performance and punishment have an important role to play. They can express the core values of an organization and set governing standards. But expression of core values and standards is not enough. Building values within an organization requires leadership.

During our review, we often asked, “What is the cornerstone of good government?” Hard-working citizens of our State, like Herbert Bashir of Irvington, said, “We need a return to concern for the public trust." Don Wisnowski, a former serviceman and resident of Little Falls, said, "At every level of government, many leaders have lost sight of the reason why they're there and of the values that this country was founded on. I'm heartsick about this, because I love our State." Bob Loughrey, proprietor of Uncle Bob's Ice Cream Shop in Cedar Grove, said, "Ethics in government means that our leaders should be doing the right thing for the people, not for themselves. We want them to do the right thing, not necessarily the popular thing."

Trust is the cornerstone of good government. By restoring public trust, we can, in the words of Governor Codey, "show government as a force for compassion and a beacon of hope." The time is now.