

Boards & Commissions

Rules of Ethics

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The contents of this presentation reflect the view of the presenter, not of CML.



Overview

- **Part I:** Governing law, application, principles
- **Part II:** Duties, breaches, consequences
- **Part III:** When personal interests arise in one's official capacity
- **Part IV:** Contexts in which prohibited substantial benefits arise
- **Part V:** Defense – disclosure/abstention

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Part I: Governing law Application Principles

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- **Statutory Law**
 - Article 18 of Title 24 (code of ethics)
 - C.R.S. 31-4-404 (conflicts)
 - C.R.S. 18-8-308 (disclosure)
- **Constitutional Law: Amendment 41**
 - Article 29 (ethics in government), gift ban and Ethics Commission
- **Local Charters and ordinances**
 - Always know these!

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To whom do these rules apply?

- **Public employees**
 - Both state and local government
- **Local government officials**
- **State public officers**
- **Members of the General Assembly**

C.R.S. 24-18-102

Note: not all rules apply equally among these groups; some have different or additional duties.

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Ethical principles

These should guide conduct:

- Avoid having an interest in a business where your official actions may have a direct or substantial impact
- Avoid making official decisions in a competitor's business matters
- Avoid taking a new job within 6 months where your official position will directly advantage you above others
- Avoid helping friends or family from getting jobs, gifts or benefits in ways related to your official capacity

C.R.S. 24-18-105

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Part II: Duties Breaches Consequences

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What duties must be maintained?

- **Fiduciary duty:** *entrusted with the care and management of money or property*
- **Public trust:** *entrusted with serving/preserving the public interest*

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Consequences

- Violations of fiduciary duty create liability to the people of the state as a trustee of property – violators of the Code of Ethics will have consequences for abusing the public's trust.
- The district attorney is authorized to bring appropriate judicial proceedings on behalf of the people, and money collected in such proceedings is paid to the general fund of the local government.
- Successful prosecution requires proof beyond a reasonable doubt.

C.R.S. 24-18-103

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What is not a breach?

- Using local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or
- Accepting or receiving a benefit as an indirect consequence of transacting local government business. C.R.S. 24-18-109(4)
- For locals, also serving on a board of directors of a nonprofit entity and voting [in their local official capacity] on matters that may pertain to or benefit the nonprofit entity. (Must announce that service prior to voting; must file if there's a personal financial interest.) C.R.S. 24-18-109(5) [new as of 2017].

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Part III: When personal interests arise in one's official capacity

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What is an official act?

Defined as any “*vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.*”

C.R.S. 24-18-102(7)

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What types of substantial, personal financial interests?

- Ownership of a business
- Creditor interest in a failing business
- Employment or prospective employment (under negotiation)
- Ownership in property (real & personal)
- Loan or debtor interest
- Directorship/officership in a business

C.R.S. 24-18-102(4)

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Part IV: Contexts in which prohibited substantial benefits arise

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Gift Ban: What is covered?

You cannot accept a

- gift of substantial value or
- substantial economic benefit

Note: "gift of substantial benefit" is not defined
C.R.S. 24-18-104(1)(b)

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Substantial economic benefits

An economic benefit that is "tantamount" to a gift of substantial value includes:

- no interest loans or interest charged well below commercial rates
- compensation for services in excess of fair market

C.R.S. 24-18-104(2)

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Use of Confidential Information

You cannot

- use or
- disclose

confidential information acquired through official means to substantially further your personal financial interests

C.R.S. 24-18-104(1)(a)

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Gifts or economic benefits that are not substantial

- Unsolicited gifts of trivial value
- Gifts valued less than \$53 (and not given by a lobbyist)
- Gifts from relatives and friends for special occasions
- Expense reimbursements
- Campaign contributions
- Honoraria for public speaking engagements

C.R.S. 24-18-104(3)

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Gift Ban: What circumstances are problematic?

The accepted gift or benefit:

- has a tendency to improperly influence a reasonable person not to faithfully and impartially discharge duties, OR
- the person knows or a *reasonable person* should know are primarily to reward for the official action taken.

Note: a gift or benefit may not have actually influenced you, rather the statutes apply the "reasonable person" standard.


C.R.S. 24-18-104(1)(b)



Supervisees or regulated individuals

- Do not engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties.

C.R.S. 24-18-109(2)(b)




Your Business

Do not take an official action that directly and substantially benefits:

- your business, or
- other undertaking in which you either:
 - have a substantial financial interest, or
 - are engaged as counsel, consultant, representative or agent

C.R.S. 24-18-109(2)(b)




Contracts(Ks) or Purchasers

You should not have an interest in any contract made in official capacity.

C.R.S. 24-18-201

Public officers and local government officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.


C.R.S. 24-18-202



No revolving door

Former employees may not, within six months following employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment.


C.R.S. 24-18-201



Consequences for K violations?

Every contract made in violation of any of these provisions is voidable at the instance of any party to the contract except the officer interested therein.

C.R.S. 24-18-203



Any exceptions for contracts?

These are not prohibited contract interests:

- Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;
- Merchandise sold to the highest bidder at public auctions;
- Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;
- A contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract; or
- A contract when the person has disclosed a personal interest and has not voted thereon.

Any such disclosure shall be made to the governing body (for local government officials and employees)

C.R.S. 24-18-201(1)(b)

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Part V: Defense - disclosure/abstention

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Defense: Disclosure

- Voluntary disclosure of the nature of the person's private interest must be made prior to acting in a manner that may impinge upon fiduciary duty and the public trust.
- Proper disclosure is an affirmative defense to any civil or criminal action or any other sanction.

C.R.S. 24-18-110

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Proper Disclosure

- Must be made in writing to the Secretary of State.
- Disclosure may be accomplished online; go to the Secretary of State website, www.sos.state.co.us; click on "Elections" and the "Conflict of Interest."

C.R.S. 24-18-110

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What is disclosed?

- Amount of financial interest (if any),
- Purpose and duration of services rendered (if any),
- Compensation received for services, or
- Such other information as necessary to describe the interest

If the act is then performed, the official or employee shall state for the record the fact and nature of the interest involved.

C.R.S. 24-18-110

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Muni Disclosure and Abstention

For members of governing body of any city or town who have a personal or private interest:

- disclose such interest to the governing body,
- abstain from voting thereon, and
- refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

Notwithstanding, may if vote if:

- participation is necessary to obtain a quorum or otherwise enable the body to act, and
- if voluntarily disclosed per C.R.S. 24-18-110.

C.R.S. 31-4-404(2), (3)

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Criminal Code - Disclosure 1

Colorado Criminal Code contains additional disclosure requirements affecting local government officials and employees.

Must give notice to the Secretary of State and to the governing body that is:

- actual
- advance
- written

Notice is required 72 hours before any action is taken.

C.R.S. 18-8-308

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Criminal Code - Disclosure 2

When is disclosure under the Criminal Code required?

If you exercise any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction

Who may have a conflict?

A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

Consequence: failing to disclose a conflict of interest is a class 2 misdemeanor.

C.R.S. 18-8-308

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Questions?

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