

APPENDIX XI

No. 1

EXECUTIVE ORDER

ESTABLISHMENT OF ETHICAL CONDUCT GUIDELINES

WHEREAS, government employment is a privilege rather than a right, and is based upon the trust and confidence placed in the State's workers by the public; and

WHEREAS, all State employees therefore must act in a manner consistent with that public trust, and must not take any actions that are intended, or appear to be intended, to achieve personal gain or benefit; and

WHEREAS, employees and officers of State agencies and public authorities are subject to certain ethical statutes and rules, including but not limited to the State Code of Ethics (Section 74 of the Public Officers Law), statutory restrictions on business and professional activities (Section 73 of the Public Officers Law), and opinions issued by the State Ethics Commission; and

WHEREAS, there are some areas where New York's existing statutes governing ethical standards can and should be improved; and

WHEREAS, until that occurs through legislative action, it is appropriate to take steps to ensure that as many State employees and officers as possible maintain the highest ethical and professional standards;

NOW, THEREFORE, I, Eliot Spitzer, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, do hereby order as follows:

1. Definitions

"Agency" shall mean any state agency, department, office, board, commission or other instrumentality of the State, other than a public authority.

"Public authority" shall mean a public authority or public benefit corporation created by or existing under any State law, at least one of whose members is appointed by the Governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

2. Application

This order shall apply to all State agency officers and employees who serve at the pleasure of the Governor or their appointing authority, and to all members of all public authorities who are appointed by the Governor. Each public authority shall adopt policies or rules applying the restrictions set forth below to all officers and employees who serve at the pleasure of their appointing authority.

3. Prohibition Against the Receipt of Gifts

Subject to the conditions set forth below, all individuals covered by this executive order are prohibited from accepting gifts or gratuities of more than nominal value where the circumstances would permit the inference that: (a) the gift was intended to influence the individual in the performance of official business; or (b) the gift constituted a tip, reward, or sign of appreciation for any official act by the employee. This prohibition shall apply notwithstanding Public Officers Law § 73(5), which provides that gifts up to \$75 may be allowed in certain circumstances.

4. Prohibition Against the Use of State Property

State supplies, equipment, computers, personnel and other resources may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind. This prohibition includes but is not limited to the following:

a. Official stationery may not be used for non-governmental

purposes, nor may State government resources be used to mail personal correspondence. The designation "personal" on agency stationery means only that the contents are meant for the personal viewing of the addressee and not that the sender is acting unofficially. All letters and other written materials printed on such official stationery are considered official, and thus the designation "unofficial" has no meaning and may not be used.

b. Under no circumstances may State mail, postage, internal office mail, or intercity couriers be used for non-governmental purposes.

c. State telephones may not be used for non-governmental long distance calls, except for toll free calls, collect calls, and calls billed to a personal telephone number. State telephones may be used for incidental and necessary personal local calls that are of limited number and duration and do not conflict with the proper exercise of the duties of the State employee.

d. State computers may be used for incidental and necessary personal purposes, such as sending personal electronic mail messages, provided that such use is in a

limited amount and duration and does not conflict with the proper exercise of the duties of the State employee.

e. State vehicles shall be used for official business or incidental use associated with official business away from an employee's official work station. Individuals who are authorized by their agency or public authority to use a vehicle for personal purposes shall keep records of such use, and the value of such personal use shall be calculated and reported as personal income to such individual for tax purposes.

5. Prohibition Against Nepotism in Hiring and Contracting

a. No individual covered by this order may take part in any hiring or employment decision relating to a family member. If a hiring or employment matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

b. No individual covered by this order may take part in any contracting decision: (i) relating to a family member; or (ii) relating to any entity in which a family member is an officer, director or partner, or in which a family member owns or controls 10% or more of the stock of such entity.

If a contracting matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

c. For the purposes of this paragraph, the term "family member" shall mean any person living in the same household as the employee, and any person related to the employee within the third degree of consanguinity or affinity.

6. Prohibition Against Executive Chamber Employees Lobbying State Agencies and Public Authorities

The provisions of Public Officers Law § 73(8) prohibiting former State officers and employees from appearing or practicing before their former agency for a period of two years shall, with respect to Executive Chamber employees, extend to appearing or practicing before any Executive Branch agency or public authority.

7. Penalties

Any violation of this order may result in dismissal or other appropriate sanction as determined by the appointing authority of the individual committing such violation.