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LEGISLATIVE ETHICS

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# THE ADVISOR

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## COMMITTEE ISSUES ADVISORY OPINION 09-02

### Advisory Opinion 09-02

#### Close Economic Association—Medical Services

AO 09-02 provides guidelines for licensed medical professionals with regard to disclosure of the name of clients.

AS 24.60.070 requires a disclosure when the formation or maintenance of a close economic association involving a substantial financial matter is with a legislator, public official defined in AS 39.560, a registered lobbyist, a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment.

However, a person who is subject to the disclosure requirements may withhold disclosure of information they would otherwise be required by the Act to disclose, to the extent that disclosure would conflict with an established constitutional right or with the requirements of a federal law.

The committee found that AS 24.60.070 does not require a disclosure of information that is required by law to be kept confidential, including information protected by confidentiality requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). To the extent a person is able to partially comply with the disclosure requirements of AS 24.60.070 without violating HIPAA requirements, a partial disclosure is required. The person disclosing the relationship is responsible for determining what HIPAA requires in this regard, and for citing the specific HIPAA provisions that are relevant in the disclosure report to the committee.

If you have any questions concerning the applicability of these requirements, please call the Ethics Office at 269-0150.

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Select Committee on Legislative Ethics

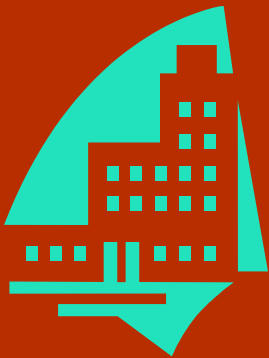
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**INTERIM DISCLOSURES**

**GIFT DISCLOSURES**

The following “Gift” disclosures are always **due within 30 days of receipt of the gift**; starting on the first day the gift was received.

- **Gift of Travel/ Hospitality for Legislative Matters-AS** 24.60.080(c)(4)

*Q: Have you taken a trip for legislative matters that was paid for with other than legislative funds? (This includes trips paid for by other branches of state government, the federal government, NCSL, CSG, etc.)* If yes, then you would need to dis-

close the gift within 30 days starting from the first day of travel.

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- **Gift Received by a Family Member Because of Legislative Connection-AS** 24.60.080(i)

*Q: Did an immediate family member receive a gift worth \$250 or more because of your legislative connection?* If yes, then you would need to disclose the gift. A good example would be when a family member accompanied you on a legislative trip and some or all of the costs of the trip were paid for with other than legislative funds.

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- **Gift of Legal Services Related to Legislative Matters AS** 24.60.08(c)(8)

*Q: Did you receive a gift of legal services related to a legislative matter worth \$250 or more?* If yes, then you must file a disclosure. Call the Ethics office for further clarification.

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- **Gifts Not Connected to Legislative Status- AS** 24.60.080(c)(6)

*Q: Have you received a gift worth more than \$250 in a calendar year from the same person/entity other than an immediate family member?* If yes, then you must file a disclosure.

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# Legislative Internship Programs must be approved

Legislative internship programs sponsored by educational institutions, other than those sponsored by the University of Alaska, must be approved by the Ethics office pursuant to AS 24.60.080(h).

Internship programs sponsored by government agencies or nonprofit organizations must also be approved by the Ethics office. To date, the following have been approved: Workforce Investment Act, First Alaskans Institute, Juneau JobX-The Learning Connection.

If you are anticipating hiring an intern either during the legislative session or during the interim, and the sponsorship is not associated with the University of Alaska, please contact the Ethics office at 269-0150.

### MORE DISCLOSURES

The following disclosures are **due within 30 days of association**; starting on the first day the association began. *Previous associations disclosed earlier this year do not need to be disclosed again during the interim.*

- **Members on a Board of Directors-** AS 24.60.030(f)

*Q: Have you recently been elected or appointed as an officer or board member of an organization?* If yes, then you must file a disclosure.

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- **Participation in Certain State Benefit and Loan Programs-** AS 24.60.050(c)(d)

*Q: Have you recently participated in a benefit or loan program administered through the State?* If yes, call the Ethics office to determine if you need to disclose. You may or

may not as it depends on award criteria.

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- **Representation Before a State Agency-** AS 24.60.100

*Q: Are you on contract/agreement to represent a client before a state agency, board or commission?* If yes, then you must file a disclosure.

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- **Interests in State Contracts and Leases (including certain family members)-** AS 24.60.040

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*Have you or any immediate family members signed a contract or lease with the state with an annual value of \$5,000 or more?* If yes, call the Ethics office to determine if you must disclose participation.

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- **Close Economic Associations-** AS 24.60.070

*Q: Do you have a financial relationship with a person covered by the Legislative Ethics Code? (i.e. legislators, legislative employees if one supervises the other, public officials who must file a Financial Disclosure with APOC, and registered lobbyists.)* If yes, then you must file a disclosure. Examples: If you share housing expenses in Juneau, or if you are business partners, or if you are a paid consultant on a legislator's campaign. The dollar amount of the financial relationship, does NOT need to be disclosed; only the fact that a close economic association exists.

Last, but not least, the requirement to file a disclosure applies to legislators, legislative staff, support staff, and other employees of the Legislative Branch.

When in doubt, give us a shout!

269-8179



## Filing Online

More than half of the disclosures submitted between May and August were submitted electronically. This is a drastic increase in numbers from the last Legislative Journal publication on April 19, 2009. The Ethics office THANKS YOU! The House Clerk and Senate Secretary THANK YOU! Filing disclosures online is easy, accurate and simply convenient. Although handwritten disclosures are still acceptable, often times they are illegible or incomplete, which is why filing online is the preferred method.



## ETHICS ACROSS THE NATION

Former New York State Health Commissioner Antonia Novello was found guilty of a felony that included \$22,500 in restitution, and a \$5,000 fine for forcing state employees to handle her personal chores while she was commissioner between 2004 and 2006. She used her state employees as personal servants with tasks that included dry cleaning, watering her plants while she was away, and ordering her employees to drive her and her friends everywhere from Albany area shopping outlets to Newark airports.

###

Former Florida House Speaker Ray Samson was found to have violated House rules by a House investigator. Samson now faces judgment of a special House panel that will re-investigate the charges and determine if the chamber should punish him. He drafted a contract for a job at a college whose duties were to include overseeing curriculum changes brought about by the legislation he helped push through the Legislature. He has also been indicted by a grand jury.

# UPDATE!

## “ON-LINE” ETHICS TRAINING

### To be available September 1, 2009

AS 24.60.155 and AS 24.60.150(a)(4)



Ethics training is mandatory. Legislative employees who have NOT completed ethics training (attended a classroom or teleconference session) for 2009, must complete the Online Video Ethics Training course within 30 days after notification by the Ethics office.

On **September 1, 2009**, the online ethics course can be accessed on the Ethics website at <http://ethics.legis.state.ak.us/> under the section titled: **Ethics Training**.

No “classroom” or “teleconferenced” training sessions are scheduled for the remainder of 2009. The next classroom training will be offered at the beginning of the 2010 session.

The training video is divided into four segments for ease of viewing. Online participants must complete each segment to fulfill the statutorily mandated ethics training requirement. After each video segment are three multiple choice questions. To view each segment, and receive credit, employees must sign in online with their legislative user name and password.

Call Linda Leigh at 269-8179 if you are unsure if you need to complete the online course.



#### Ethics Training Tip:

- ◆ Do more than the law requires
- ◆ Do less than the law allows



## 2009/2010 LEGISLATIVE ETHICS LEGISLATION-HB 193

HB 193, sponsored by Representative Coghill, addresses administrative hearings, charity events, public member compensation, disclosure exemption, alternate members for public members, and a section on definitions. The bill was moved out of House State Affairs and House Judiciary in 2009, and will require a hearing in House Finance before moving to the House floor.

"To inspire public trust and integrity we cannot rely alone on formal laws, code and institutional reforms—that is, institutional integrity... We need also to reinvoke personal integrity, trust, and other ethical values."

Rosamund Margaret Thomas, "Public Trust, Integrity, and Privatization," Public Integrity, Summer 2001

## ASK THE ETHICS OFFICE

**Question:** *May a legislative employee receive a gift of flowers or candy as a "thank you" for a job well done?*

**Answer:** A legislative employee is permitted to receive a gift of flowers or candy as a "thank you" gift for legislative work performed. It is also acceptable to receive other similar gifts as a thank you. However, a legislative employee is not permitted to receive a gift of "money" or airline miles as a thank you gift. These types of items would fall in the category of a "thing of value" as defined in AS 24.60.990. A "thing of value" includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material work, use, or service to the person to whom it is conferred. If you are unsure whether the thank you gift is permissible or not, give the Ethics office a call.

**Question:** *If the registration fee is waived for a conference and the amount is over \$250, is the legislator required to disclose the actual cost of the waived registration as a gift?*

**Answer:** Yes. Any cost associated with a legislative trip that is either paid for by an entity other than the legislature, or waived, is considered a gift. If the aggregate amount of the gift(s) are valued at \$250 or more, they must be disclosed within 30 days of receipt.

**Question:** *May a legislator or legislative employee accept a gift of a fishing trip from a lobbyist?*

**Answer:** No. A gift of a fishing trip from a lobbyist is prohibited regardless of the value. Gifts of this nature from lobbyists are not allowed. However, a legislator or legislative employee is not prohibited from going fishing with a lobbyist, although the legislator must pay his/her own way; i.e. his/her share of the cost of gas, bait, etc. Food and beverage for immediate consumption are not considered gifts and may be accepted. Lobbyists should check with APOC to determine if reporting the costs of F&B is required.

**Question:** *May a legislator or legislative employee accept an invitation to dinner at a local restaurant from a lobbyist?*

**Answer:** Yes. Food and beverage for immediate consumption are allowable gifts. If the cost of the food and beverage exceeds \$15, the lobbyist must report the cost of the food and beverage to the Alaska Public Offices Commission. There is no reporting requirement for legislators or legislative employees.

**Question:** *May legislative staff set up the POET (Public Office Expense Term) account and maintain the account? (i.e. record expenses and file the report with APOC for the legislator.)*

**Answer:** Yes. There is a legislative purpose in setting up the POET account. The POET account is unused campaign funds which must be used only for expenses that have a legislative purpose. Contact APOC for questions on reporting requirements.

## FIVE STEPS TO IMPROVE YOUR ETHICS IQ

1. Visit the Alaska Legislature's Ethics website at <http://ethics.legis.state.ak.us>. You can browse through information about the ethics code and access a searchable database of ethics advisory opinions. On-line ethics filing of disclosures are explained.
2. Read previous ADVISOR newsletters posted on the website for the latest information about ethics.
3. Reference the "Standards of Conduct Handbook" for guidance. The handbook includes situational examples for each section of the code and other informational material on ethics. *NOTE: The handbook is distributed at the beginning of each legislative session. If you do not have a handbook, call the Ethics office and one will be mailed to you..*
4. Call the Ethics office for advice. Your call is confidential.
5. Suggest items/issues to include in future ADVISOR newsletters.



# INFORMATION AND GUIDANCE

## Constituent Services-Advisory Opinion 08-03

Many calls have been received concerning constituent services. The following is a recap of **Advisory Opinion 08-03**

AO 08-03 provides guidelines when performing constituent services. This opinion supersedes and is contrary to AO 07-04.

Legislative offices are one of the viable and necessary avenues by which Alaskans can access state government to obtain or improve services for themselves.

Constituents often do not know about laws, rules or regulations governing a particular agency or it may be they just do not accept the relevant parameters.

The committee defined “performing constituent service” as:

- Assisting constituents in navigating government bureaucracy
- Developing a communication line between a government agency and the constituent

Legislative intent in performing constituent service is threefold:

- 1.) to move the constituent's concerns forward.
- 2.) to make sure everyone involved knows what they need to know.
- 3.) to urge the government agency to take timely action

AS 24.60.030(a)(2) prohibits the use of public resources for the private benefit of either the legislator, legislative employee, or another person. There is a difference between performing constituent services as defined above and advocating for a constituent’s “private” interest. “Advocate” is defined to mean; a person who pleads another’s cause, a person who speaks or writes in support of something, or to be in favor of. For example, serving as a personal representative for a constituent falls within the realm of constituent advocacy and provides a private benefit to the constituent, and therefore is prohibited. Negotiating a settlement with a state or other government agency for the constituent or pursuing an appeal with a government division for a constituent is also prohibited under the Act.

Advocating a constituent’s position with the use of legislative letterhead, a state resource, is also not a permitted use of state resources. There is an appearance of impropriety in that the legislator is attempting to influence the outcome of an issue with a government agency to be in favor of the constituent.

Additionally, government resources should not be used for activities such as obtaining and/or picking up records from a facility, creating and typing reports or listings of items requested by a state agency, to name a few. This type of preparation is the responsibility of the constituent. State resources for these activities constitute a private benefit for the constituent.

Performing these types of activities with the state resources would open the door to equal access to state resources for similar requests for all individuals. Keep in mind, a legislative aide is certainly not prohibited from providing this type of assistance to a constituent when a roadblock occurs.

The amount of time spent on a constituent issue does not factor into private benefit. (Note: The ten hour limit suggested in Advisory Opinion 07-04 no longer applies.)

The fact a constituent may receive a private benefit, such as a monetary award for a favorable solution to an issue, in and of itself is not considered a private benefit under AS 24.60.030(a)(2).

*AO 08-03 contains examples that will be helpful when working on constituent issues.*

Complete text of advisory opinions available on the Ethics Website under Advisory Opinion Search.”