



CALVERT COUNTY ETHICS COMMISSION

Post Office Box 1104
Prince Frederick, Maryland 20678

9/1/2015

MEMORANDUM

To: All Elected Officials, Appointed Officials, Employees and Volunteers

From: The Calvert County Ethics Commission (CCEC)

Subject: Advisory Opinion on Recusal

The Calvert County Ethics Code issues this informational "Advisory Opinion" in order to provide guidance and create awareness of necessary recusal procedures. The intent of the outlined procedures is to protect employees, elected officials, appointed officials, and volunteers and Calvert County.

The Calvert County Ethics Code prohibits conflicts of interest and appearances thereof. § 41-13 of the Code lists the conflicts of interest covered. One of the most prevalent activities which can result in a conflict of interest or the appearance of a conflict is; when one fails to recuse oneself when required to prevent a real or perceived violation of the Ethics Code.

Definitions

Points of clarification which will assist an individual's understanding of the Code are the definitions of "Recusal," "Matter," and "Participate."

Recusal: means the process by which a person is disqualified, or disqualifies him or herself from a matter because of a conflict of interest or an appearance of a conflict.

Matter: is any proceeding, application, submission, request for ruling, or other determination; contract, claim, case, or other particular issue which requires attention of an individual in carrying out the responsibilities of the position.

Participate: means involvement as an elected official, appointed official, employee, or volunteer; in any proceeding, decision, determination, finding, ruling order, grant, payment, award, license, contact, transaction, sanction, approval, or the denial, therefore; or failure to act with respect thereto, personally and substantially through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. "Participation" includes attending meetings, holding discussions, reviewing materials and supervision, as well as hands-on activities involved in an individual's County duties.

Historical Background

The concept of recusal for the elected official is historical, important, and sometimes difficult. The Supreme Court has opined on the subject. The House of Representatives first enacted a recusal rule in 1789, and Thomas Jefferson enacted a recusal rule for the United States Senate while he served as its President.

That rule provided:

"Where the private interests of a member are concerned in a bill or question, he is to withdraw. And where such an interest has appeared, his voice [is] disallowed, even after a division. In a case so contrary not only to the laws of decency, but to the fundamental principles of the social order..."

◆ Marshall Coffman, Chairman ◆ Bruce Henkelman, Vice Chairman ◆ Jennifer Mazur, Secretary ◆
◆ Arthur Fournier, Jr., Member ◆ Eugene McHugh, Member ◆
◆ Telephone (410) 414-8079 ◆ Email calvertethics@gmail.com ◆

From the earliest days of this Nation, recusal has been an important tool to maintain impartiality in the applications of “Government” to the governed. Today’s governments are more involved in people’s lives than ever. It can grant or deny, enrich or impoverish. The reasons behind these activities are not discussed here. What is discussed are some aspects of an important tool, “recusal” that can be used to help maintain, fairness, honesty and confidence in Government.

In a recent Nevada case¹ where a legislator voted on a matter where a close personal friend and former campaign manager was a paid consultant of a party requesting approval of a project, the Ethics Commission rules a vote to be an ethics violation, “Mr. Carrigan violated the law. . .” with respect to which the independence of judgment of a personable person in his situation would be materially affected by a dose relationship with a person who has an interest in the outcome of the matter.

Mr. Carrigan's suit argued that the Ethics Commission violated his First Amendment right to freedom of expression. In upholding the ethics law and the decision of the Nevada Ethics Commission, the U.S. Supreme Court stated:

“But how can it be that the restrictions upon legislators' voting are not restrictions upon legislators' protected speech? The answer is that a legislators' vote is the commitment of his apportioned share of the legislatures' power to the passage or defeat of a particular proposal. The legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal rights to it.”

As the foregoing, and Nevada case make clear; laws prohibiting legislators from voting on matters in which they have personal interests, have both historical and legal validity. The Court also found that advocating for or against the passage of legislation was prohibited as a reasonable time, place, and manner limitation.

There are many other examples of the importance of ethical conduct at all levels of the Government. It is not just elected officials who must perform ethically. It is every individual who serves.

Ethical conduct is essential to maintain confidence in the fairness and honesty of the institutions of Government.

We can all be proud of the ethical reputation of the Calvert County Government. It is one of the best in the state — let's keep it this way.

Recusal Policy and Procedures

1. If an elected or appointed official, employee, or volunteer; determines or agrees with a suggestion of an incompatible financial or personal interest exists on a matter, the elected or appointed official, employee, or volunteer should recuse himself or herself from that matter. If any doubt exists, advice from the Ethics Commission ought to be sought. The recusal should be absolute; the elected or appointed official, employee, or volunteer; should have no direct or indirect involvement with the matter from which he or she recused himself or herself. The full extent of recusal requires:
 - a. Not participating in the Board, Commission, Agency, or Department discussion or vote on the matter;
 - b. Not discussing the matter or the review of the matter with others;
 - c. Physically leaving the meeting room, in order to ensure no participation and no influence, during hearings, discussion, or voting on the matter; and
 - d. Documenting one's recusal in the minutes of the Board, Commission, or Agency meeting or on the part of an employee submitting written notification of the recusal on the matter to one's supervisor.

2. All recusals, other than those provided for in no. 3 below, should be memorialized (documented and retained) in writing. The writing should:
 - a. Specify the date and duration of the recusal (which may be expressed in terms related to the pendency of the matter in the County government),
 - b. Specify the reason for the recusal,
 - c. Specify the "matter" recused from,
 - d. Recusal documentation should be retained for a minimum of four (4) years.

3. In the case of a government entity which maintains a public record of a proceeding; for example, a Board or Commission meeting, formal written recusal is not required; however, the following procedures should be followed:
 - a. To the extent feasible, meeting materials involving a matter from which an individual should recuse himself or herself should not be distributed to the individual;
 - b. At the subject meeting, the individual should place his or her recusal and the reason for such recusal on the record prior to any discussion of the matter;
 - c. The individual should leave the room at a public or closed portion of the meeting while the matter in question is under discussion; and
 - d. Recusal documentation should be retained for a minimum of four (4) years.

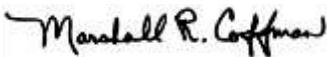
For documentation convenience, the attached "Recusal Documentation Form" can be used.

It is important for individual protection; all recusals are documented to verify the recusal procedures were appropriately executed. The CCEC encourages everyone to become familiar with Calvert County Ethics Code, in particular §41-13. [The Code](http://ecode360.com/15519458) can be viewed: <http://ecode360.com/15519458>.

Personal familiarity with an involved individual does not, in and of itself, require recusal of an individual subject to the County Ethics Code. Elected Officials, Appointed Officials, Employees, Volunteers, and any interested person may seek advice from the Calvert County Ethics Commission in determining the need for recusal on a specific matter.

Please contact the CCEC if there are any questions on this matter or any ethics issue.

Sincerely,



Marshall R. Coffman
CCEC Chair

¹ Nev. Comm'n on Ethics V. Carrigan, 131 S. ct 2343 (U.S. 2011)¹



CALVERT COUNTY ETHICS COMMISSION

Post Office Box 1104
Prince Frederick, Maryland 20678

RECUSAL DOCUMENTATION FORM

Date: _____

To whom it may concern:

Recused Individual's Name: _____

Recused Individual's Department: _____

Recused Individual's Position: _____

Date of Recusal: _____

Recusal Duration Period: From _____ To: _____

- | | |
|--|--|
| <input type="checkbox"/> Business Relationship (past, present, future) | <input type="checkbox"/> Employment Relationship (past, present, future) |
| <input type="checkbox"/> Family Relationship | <input type="checkbox"/> Financial Relationship (past, present, future) |
| <input type="checkbox"/> Friendship/Neighbor Relationship | <input type="checkbox"/> Legal Relationship (past, present, future) |
| <input type="checkbox"/> Professional Relationship (past, present, future) | <input type="checkbox"/> Social Relationship (past, present, future) |
| <input type="checkbox"/> Other (Please Specify) | |

Recusal Subject Matter: _____

Additional Information: _____

Recused Signature _____

Date _____

Supervisory Signature _____

Supervisory Printed Name _____

Date _____
