

A Message from CUNY General Counsel Frederick Schaffer on Governor Spitzer's Executive Orders

Dear Members of The CUNY Community:

On his first day in office, Governor Spitzer issued five executive orders of which the first three are relevant to CUNY. The purpose of this memorandum is to summarize the contents of those executive orders insofar as they apply to CUNY or its officers or employees.

Executive Order No. 1 Establishment of Ethical Conduct Guidelines

Application: This executive order applies to all officers and employees of all state agencies, departments, boards, commissions and other instrumentalities of the state, which include CUNY, who serve at the pleasure of the Governor or their appointing authority, which in the case of CUNY is the Board of Trustees. This creates an anomaly in that not all of CUNY's officers and employees serve at the pleasure of the Board. In order to ensure that all of CUNY's officers and employees will be subject to the same ethical standards, the Chancellor will recommend to the Board at its February meeting the adoption of a policy applicable to all officers and employees that contains the same provisions as the executive order. This executive order also applies to members of all public authorities who are appointed by the Governor. Since CUNY is not a public authority, it does not apply to its Trustees. Accordingly, the Chancellor will also recommend to the Board at its February meeting the adoption of an amendment to the Code of Conduct applicable to the Trustees that contains the same provisions as the executive order.

Prohibition Against the Receipt of Gifts: Individuals covered by this executive order are prohibited from accepting gifts 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 individual. This prohibition applies notwithstanding the provision of the Public Officers Law § 73(5), which permits gifts of up to \$75 in value under certain circumstances.

Prohibition Against the Use of State Property: State supplies, equipment, computers, personnel and other resources (including stationery, mail, telephones and state vehicles) may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind, except as follows.

- State telephones and computers 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.
- Where a state agency or public authority has authorized individuals to use state vehicles for personal purposes, such individuals shall keep records of such use, and the value of such personal use shall be calculated and reported as personal income to them for tax purposes.

Prohibition Against Nepotism in Hiring and Contracting:

- No individuals covered by this executive order may take part in any hiring or employment decision relating to a family member or in any contracting decision relating (i) to a family member or (ii) 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 hiring or employment decision or contracting matter arises relating to a family member, then the employee must advise his or her supervisors of the relationship and must be recused from any and all discussions or decisions relating to the matter.
- For purpose of this provision, a "family member" means 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 (spouse and parents, children, grandparents, grandchildren, siblings, aunts and uncles, nieces and nephews, great-grandparents and great-grandchildren of you and your spouse).

Executive Order No. 2
Eliminating Politics From Government Decisionmaking

Application: Same as Executive Order No. 1.

Prohibition Against Campaign Contributions to the Governor and Lieutenant Governor: No individual covered by this executive order may make or offer to make any monetary contribution to the campaign of the Governor or the Lieutenant Governor, or to any political campaign committee organized by or for the benefit of them. In addition, no individual covered by this executive order may request or demand that any other person make or offer to make such a contribution.

Prohibition Against Consideration of Politics in Employment and Contracting: No individual covered by this executive order who is involved in recruiting, interviewing or hiring applicants for state employment, or making promotional, disciplinary or other employment decisions relating to state employment, or who is involved in the awarding of state grants or contracts, or in making decisions relating to state grants or contracts, may ask such applicant, employee or prospective grantee or contractor to reveal (i) his or her party affiliation; (ii) whether he or she has made campaign contributions to any party, elected official or candidate for elective office; or (iii) whether he or she voted for any elected official or candidate for elective office.

Prohibition Against Appearances by Candidates in State Advertising: Under no circumstances may any state agency permit any elected official or candidate for elective office to appear in any advertisement in any media, if such advertisement is paid for, in whole or part, directly or indirectly, by such state agency or if any state agency resources are utilized in the creation of such advertisement.

Prohibition Against Campaigning for State or Federal Office: No head of a state agency may seek nomination, designation or election to any compensated federal or state public office, or commence a candidacy for such office, unless such individual first resigns from state service or requests and is granted a leave of absence without pay.

Executive Order No. 3
Promotion of Public Access to Government Decisionmaking

Requirement to Broadcast Public Meetings: By March 1, 2007, every state agency shall submit to the Secretary to the Governor a plan that (i) identifies all meetings that are subject to the Open Meetings Law and (ii) specifies a timetable for ensuring that all such meetings are broadcast on the Internet. Such plan may identify circumstances in which such webcasting is either impractical or inappropriate and may seek approval for exemption from the requirement of webcasting. Except where an exception is granted, all meetings that are subject to the Open Meetings Law shall be broadcast on the Internet no later than July 1, 2007.

CUNY has for many years broadcast meetings of the Board of Trustees on CUNY-TV. More recently, it has also placed on its web site excerpts of Board meetings involving presentations by the Chancellor and his staff. We plan to immediately start webcasting meetings of the Board and of Board committees. However, we plan to request an exemption from the requirement of webcasting for other meetings subject to the Open Meetings Law, such as meetings of college councils, faculty senates, college associations, etc.

Best wishes,

Frederick P. Schaffer
General Counsel & Senior Vice Chancellor for Legal Affairs

January 23, 2007