



**PATRICIA E. SALKIN, EDITOR**

# **Ethical Standards in the Public Sector**

**A Guide for Government Lawyers,  
Clients, and Public Officials**

Section of State and Local Government Law  American Bar Association

EX-C-1

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# ABOUT THE EDITOR

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*Patricia E. Salkin*

Patricia E. Salkin is associate dean and director of the Government Law Center of Albany Law School. She teaches a course in government ethics at Albany Law School and is a member of the Steering Committee for the Council on Government Ethics Laws. She currently co-chairs the ethics committee for the ABA Section on State and Local Government Law and is the section's designee to the ABA's Ethics 2000 initiative. At the state level, she is a member of the Executive Committee of the Municipal Law Section of the New York State Bar Association. She is a frequent lecturer and writer on topics dealing with government ethics at the state and local levels.

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## ABOUT THE AUTHORS

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*Robert T. Begg*

Robert T. Begg is associate dean and director of the library at Albany Law School. He also teaches a course in the legal profession at the law school. He joined the faculty of Albany Law School in 1983 after serving as director of the law library and professor of law at Pettit College of Law of Ohio Northern University. He is a graduate of Slippery Rock College (B.S.), the University of Oregon School of Law (J.D.), and Rutgers University (M.L.S.).

*George F. Carpinello*

George F. Carpinello is a member of the firm of Barrett Gravante Carpinello & Stern L.L.P. and is resident in the firm's Albany office. He practices in the area of general litigation, antitrust, constitutional, municipal, and commercial law. He was formerly a professor of law and director of the Government Law Center of Albany Law School. He is Chair of the New York State Advisory Committee on Civil Practice, past Chair of a statewide panel studying New York's physician discipline process, past Chair of the Judicial Administration Committee of the New York State Bar Association and past president of the Legal Aid Society of Northeastern New York. He is a graduate of Princeton University and Yale Law School.

*Mark Davies*

Mark Davies has served as executive director and counsel of the New York City Conflicts of Interest Board since 1994. Before that he was the executive director of the New York State Temporary State Commission on Local Government Ethics, where he drafted proposed major revisions to New York State's ethics law for local government officials. He also served as a deputy counsel to the

New York State Commission on Government Integrity. During fifteen years of private practice he specialized in litigation and municipal law. He is a member of the executive committee of the New York State Bar Association's Commercial and Federal Litigation Section and editor of their newsletter, and is the Chair of the Ethics and Professional Responsibility Committee of the Municipal Law Section of the association. He has lectured extensively on civil practice and on ethics and has authored numerous publications in those areas. He is also the directing editor and revision author of West's *McKinney's Forms for the CPLR* and is the directing editor and lead author of West's *New York Civil Appellate Practice*. Mr. Davies graduated from Columbia College and Columbia Law School and is an adjunct professor of law at Fordham and New York Law Schools.

*John D. Feerick*

John D. Feerick has served as dean of Fordham University School of Law since July 1982. He practiced law from 1961 to 1982 at the firm of Skadden, Arps, Slate, Meagher & Flom, as a partner from 1968 to 1982, developing its labor and employment law practice. During his tenure as dean he has served in a number of public positions, among them chairman of the New York State Commission on Government Integrity and special New York State attorney general. He currently cochairs the Ethics Committee of the Dispute Resolution Section of the ABA and previously chaired a joint committee of the ABA, American Arbitration Association, and SPIDR that developed a set of ethical standards for mediators of disputes. He has been a mediator and arbitrator of many labor disputes, some involving high-profile parties such as the New York City Transit Authority, the NFL, and the NBA. Dean Feerick currently serves as president of Citizens Union Foundation; as Chair of the Executive Committee of the American Arbitration Association, the oldest dispute resolution group in the United States; Chair of the Fund for Modern Courts, which studies the improvement of the administration of justice in New York courts; and Chair of the Standards Review Committee of the ABA Legal Education Section, which proposes accreditation standards for American law schools. He also chaired the New York State Committee to Review Audiovisual Coverage of Court Proceedings. He is the author of several books, scores of articles, and was nominated for a Pulitzer Prize. He is a graduate of Fordham College and Fordham Law School, where he served as editor-in-chief of its law review.

*Thea Hoeth*

Thea Hoeth is a native of Schenectady, New York. She attended Catholic elementary and secondary schools; was graduated cum laude from St. Lawrence University in Canton, New York; and received her J.D. from Albany Law School of Union University, Albany, New York. She was a partner in the Albany law firm of Adams, Hoeth & Justice, P.C., then held a number of posi-

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tions in New York State government, including the cabinet-level post of executive director of the Office of Business Permits and Regulatory Assistance, deputy director of state operations, and special assistant to the governor for management and productivity. From 1981 to 1984 she served as executive director of the New York State Ethics Commission. She teaches legal ethics as an adjunct professor at the Sage Colleges in Albany, New York, and is currently the executive director of the Volunteer Center of the Capital Region. She is a member of the Women's Bar Association of the State of New York, having served in various statewide and local offices in the 1980s. She is a member of the board of directors of the Albany-Schenectady League of Arts.

*Richard Rifkin*

Richard Rifkin is currently Deputy Attorney General for the State of New York. He served as executive director of the New York State Ethics Commission from March 1994 until February 1999. From 1979 until 1994 Mr. Rifkin served in the office of Attorney General Robert Abrams, first as deputy first assistant attorney general and later as counsel to the attorney general and first assistant attorney general. Before his service in the attorney general's office, Mr. Rifkin was counsel to the borough president of the Bronx. From 1966 through 1973 he was a lawyer in private practice in New York City, associated with the firms of Hale, Grant, Meyerson, O'Brien & McCormick and Hoffinger & Stuart. He was also staff counsel to Assemblyman Leonard Price Stavisky from 1970 to 1973. He is a graduate of Washington and Jefferson College and Yale Law School and is admitted to the bar in New York and Washington, D.C. He is a member of the Chief Administrative Judge's Advisory Committee on Civil Practice and is a member of the Association of the City of New York, where he serves on the Committee on Government Ethics, and the New York State Bar Association.

*Jeffrey Rosenthal*

Jeffrey Rosenthal became first assistant counsel to the Governor's Office of Regulatory Reform in August 1995. Before his appointment he served as Amsterdam City Court judge. He was the first lawyer in New York State to serve two counties (Montgomery and Fulton Counties) simultaneously as assistant district attorney. He is the legal advisor, training coordinator, and member of the steering and executive committees of the Montgomery Youth Court, a student peer review court that adjudicates minor family court cases. He has served as a board member of the Amsterdam Industrial Development Agency and from 1979 until his current appointment maintained a general practice of law. He has been a legal advisor to the Tri-County Mediation Center and has been a lecturer in criminal law and procedures in the police officers recruit training program. He received a B.A. from Alfred University and a J.D. from Vermont Law School.

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*Joan R. Salzman*

Joan R. Salzman is the director of enforcement at the New York City Conflicts of Interest Board (the NYC Board). She has served in that capacity since 1995, having begun city service as associate counsel for enforcement at the NYC Board in 1994. Ms. Salzman has written and lectured extensively on enforcement of ethics laws and conflicts of interest. Her work has appeared in *The New York Law Journal* and the *The Chief Leader*, New York City's civil service weekly newspaper. Ms. Salzman has also written or co-written several of the NYC Board's educational videotapes, including two mock ethics trials, all in conjunction with New York City's Crosswalks Television. She is a graduate of Yale College (1979) and Harvard Law School (1982). Before her government service, Ms. Salzman was in private practice as a litigator. She served as the secretary of the New York City Bar Association Committee on Municipal Affairs from 1986 to 1989 and is currently a member of the city bar association Committee on Government Ethics.

*Barbara Smith*

Barbara Smith serves as counsel to the New York State Ethics Commission and has done so since its founding in 1989. The State Ethics Commission has jurisdiction over state officers and employees and has authority to interpret and enforce the Public Officers Law ethics provisions. Before her position with the ethics commission, Ms. Smith served as first assistant counsel at the New York State Department of Economic Development. She is a graduate of Albany Law School and a member of the New York State Bar Association's Committee on Attorney Professionalism and the subcommittee on attorneys in public service.

*Kathleen Waits*

Kathleen Waits is associate professor of law at the University of Tulsa College of Law. She has also taught at Albany Law School, American University, and the University of Florida. She teaches courses in contracts, professional responsibility, remedies, and domestic violence. She has written on government ethics issues, including articles on pro bono and the client of government lawyers. Professor Waits has also worked in the public sector as a lawyer for the U.S. Department of Labor. She is a graduate of Harvard Law School.

*Hugh B. Weinberg*

Hugh B. Weinberg currently serves as deputy counsel for the New York City Department of Homeless Services. Previously he had spent seven years with the New York City Conflicts of Interest Board, the last four of which he served

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as deputy counsel. While there, he supervised and participated in editing opinions, conducting proceedings concerning ethics violations, preparing educational materials, and helping to conduct training sessions. Mr. Weinberg has written and spoken frequently about government ethics issues, and is still a member of the Government Ethics Committee of the Association of the Bar of the City of New York.

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## P R E F A C E

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This book is a compilation of essays, articles, and research put together in 1997. It is intended to help government lawyers begin to focus on some of the ethical considerations that arise in the practice of law in the public sector. It is not intended to provide answers to each scenario for every jurisdiction. Just as "all politics is local," so too are our ethical standards, rules, and regulations that govern the conduct of state and local government officials and their lawyers. This book does, however, provide a solid overview of many of the complexities of public sector ethics. The chapters that follow contain practical insights to help lawyers and their public sector clients choose the most ethical course of conduct.

Not only must government lawyers be concerned with standards of ethics and professionalism that govern the practice of law, but they also must be conversant with myriad federal, state, and local laws that may govern their own conduct in the public sector and that clearly govern the conduct of the officials to whom they provide legal advice. Legal research on government ethics issues can be challenging at times, overwhelming, and often frustrating. For example, at the state level, in addition to the statutory law, every state has an ethics commission that issues opinions. Some of these opinions are easier to access than others as more and more state agencies are beginning to put their opinions on-line over the Internet and in other commercial electronic formats. In addition to these sources, many individual state agencies have adopted unique regulations governing specific ethics issues for employees of the agency. This is an often overlooked source of information. Furthermore, upon request, a state attorney general may issue an opinion regarding an ethics question involving individuals, conflicts between agencies, and lawyer-client relationships. This is not to suggest, however, that all state-level ethics opinions are published or even made available to the public. For example, in some cases, opinions and letters from legislative ethics committees are deemed confidential and are conveyed only to the member requesting the advice.

At the local government level, responding to government ethics questions can be even more challenging. While state statutes in many jurisdictions



address issues of official conduct at the local level, these laws are often scattered and not comprehensive. In a number of cases, state law merely enables municipalities to adopt their own codes with little or no guidance. A majority of the states provide no targeted state-level technical assistance to municipalities with respect to government ethics issues, and in only a minority of states does the state-level ethics commission have concurrent jurisdiction over localities. Further complicating the search for guidance on local ethics questions is the disparate quality and lack of consistency of locally crafted ethics laws, the lack of published information from local ethics boards (where they even exist), and even things as simple as locating a copy of the local ethics law believed to have been enacted in the past.

There is perhaps no greater responsibility and challenge confronting public sector lawyers than that of upholding the public trust and integrity in government, both through personal conduct and through counseling government clients on the appropriate course of conduct. A keen sense of awareness of the unique ethics issues facing the public sector, combined with a proactive strategy to protect the good reputation of government officials is a necessity. Ethics education and training for the public sector should begin with programs developed by the government lawyer. The modest training programs that may be available in some jurisdictions are rarely enough, and in many places, no formalized training exists.

Although many of the issues that confront public officials remain somewhat thematically related over the years, such as gifts, honoraria, and financial conflicts of interest, new issues are constantly arising and demanding that government lawyers stay on top of recent developments. For example, the American Bar Association launched Ethics 2000, an initiative designed to revisit the Model Rules of Professional Responsibility (presenting opportunities and possibly creating new concerns for government lawyers). In addition, the recent U.S. Supreme Court ruling in the *Lindsey* case raises new concerns for government lawyers and their public official clients in terms of the lawyer-client privilege and confidentiality. Finally, in the last couple of years, the issue of "pay to play," or the giving of campaign contributions by lawyers to individuals seeking elected public office, with the intent that the money was given to secure legal work, has been the subject of debate within the American Bar Association and the New York State Bar Association. These three issues alone could reshape the way in which government lawyers conduct themselves at the turn of the century.

While the challenges may be great and the issues diverse and at times not easily answered, there are a variety of places where government lawyers may go to seek assistance. The American Bar Association's Section on State and Local Government Law, as well as the Division for Government and Public Sector Lawyers, may be consulted for resource material. The Council on Government Ethics Laws is a national umbrella organization for federal, state, and local ethics agencies (as well as elections, campaign finance, and lobbying entities). The Government Law Center of Albany Law School provides train-

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ing and technical assistance on ethics issues for the public sector workforce, as do many national and state municipal associations. State and local ethics agencies offer another avenue for support, as well as departments within the office of attorney general and comptroller. The Internet provides increasing information on government ethics issues as web sites from ethics agencies and other governmental entities go on-line, publishing opinions and recent developments in the law.

The authors of the various chapters and articles contained herein represent some of the best minds addressing government ethics issues today. Enjoy the thoughts, ideas, and suggestions herein, and continue to represent honesty and integrity in our great system of government and governance.

Patricia E. Salkin