

Comparative Ethics in Government: US and Europe

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Overview

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Federal and State Ethics

- ▶ The U.S. federal government, which includes the executive, legislative*, and judicial branches each have ethics guidelines and procedures.
- ▶ In addition, the criminal justice system may independently investigate criminal wrongdoing (including the Attorney General and the FBI as examples)
- ▶ Federal Ethics laws concerning conflicts and financial disclosures

- ▶ Additionally, state governments also have implemented ethics standards and laws for their respective branches of government.
- ▶ This presentation will primarily focus on the Massachusetts ethics laws which closely mirror federal ethics standards.

Congressional Code of Conduct

- ▶ Members of congress must, at all times, act in a manner that shall reflect well on the House and Senate
- ▶ Code of ethics is voted on and legislated by each branch of Congress—thus the ethics guidelines are self-regulating
- ▶ Ethics guidelines extend to members, delegates, commissioners, and employees of Congress (all referred to as members)
- ▶ No member shall accept any gift or compensation that would extend to improper influence over any member of the Congress
- ▶ Members may not accept an honorarium for a speech or writing for a publication, with few exceptions
- ▶ Members must keep campaign funds separate from personal funds; may not convert campaign funds to personal in excess of legitimate reimbursements;
- ▶ Members shall treat as campaign contributions all proceeds from testimonial dinners and other fundraising events

Congressional Code of Conduct

- ▶ Members may not retain employees for which their job function is not commensurate with the compensation that employee receives
- ▶ Members may not refuse to hire an individual based on race, color, religion, sex, disability, age, national origin and may take no consideration of domicile or political affiliation
- ▶ Members convicted of court orders should refrain from committee matters, debate, and voting in Congress unless/until reinstatement of the presumption of innocence or next election
- ▶ Members may not authorize groups or individuals not under the control of Congress to use terms such as Congress, House of Reps, Senate on official documentation, letterhead, and envelopes
- ▶ Employees of the Congress may not personally and substantially participate in non-legislative functions in the Executive or Judicial branches affecting non-government persons in which the employee has a financial interest

Congressional Code of Conduct

- ▶ Members must take a recorded oath to not disclose classified information prior to gaining access to such information and the oath must be recorded in their respective body
- ▶ Members may not intend to influence an employment decision of any private entity based on any partisan political affiliation (threaten to withhold or influence)
- ▶ Members may not use personal, official, or campaign funds for air travel unless the air carrier is certified by the Fed. Aviation Admin. or the plane is personal in nature or for personal use
- ▶ Members who request earmarks or tax benefits in any bill or resolution must provide a written statement to the committee of jurisdiction the following:
 - ▶ Name of Member; Name and address of recipient benefit or location; the reasonably anticipated benefit; certified statement that the Member has no financial interests in such earmark or tax benefit

Massachusetts Ethics

- ▶ The Commonwealth of Massachusetts has a combination of ethics codes and legislation that govern public employees and officers of the government that include:
 - ▶ MA House and Senate Codes of Conduct*
 - ▶ Judicial Codes of Conduct
 - ▶ Executive Codes of Conduct
- ▶ In addition to self-regulating rules of conduct, the state has empowered an independent commission in charge of ethics investigations and research with guidelines that govern all public employees—the State Ethics Commission*
- ▶ Power of the State Attorney General to criminally investigate officials
- ▶ Conflict of Interest laws and Financial disclosure laws*

Massachusetts Senate

- ▶ Like the U.S. Congress, state legislatures conduct within the body is self-regulating and investigated by their respective ethics committees, often times with assistance of outside counsel
- ▶ No member, officer, or employee (member) shall influence or attempt to influence any board, agency, authority, or commission of the Commonwealth, any subdivision of the Commonwealth, or any other entity.
- ▶ No member shall be compensated from said influence by any entity
- ▶ Every opportunity must be made to avoid appearances of using an official position for any benefit
- ▶ Members should refrain from accepting or retaining any economic interests that represents a threat to their independent judgment
- ▶ No member shall use any confidential information gained to further any type of financial interest

Massachusetts Senate

- ▶ No individual may be employed by the Senate who does not provide services to the Senate; no employee of officer may engage in outside business during Senate business hours; no member shall act on a matter before a committee or vote on any issue that affects a member's private right
- ▶ Each Senator is assigned an office in the State House with full authority to hire and fire a staff within the Senate rules
- ▶ No member of the Senate may hold the presidency for more than 8 consecutive years
- ▶ Ensures each member shall be entitled to an email account to be contacted by the public
- ▶ Committee on Ethics shall sponsor ethics training for members/staff within 90 days of each new biennial session
- ▶ No member shall be compensated for more than three leadership positions and no more than one vice-chair position of a committee

Massachusetts House

- ▶ Establishment of a House Ethics committee (also self-regulating), members appointed by both the Majority and Minority parties
- ▶ Committee will investigate and evaluate any sworn written complaints about any member or employee of the House
- ▶ The committee shall notify the name alleged in the complaint and this individual will have the opportunity to appear before the Ethics committee with counsel
- ▶ All proceedings including the initial complaint is to remain confidential
- ▶ If the findings are found to have merit to warrant public interest, after a majority vote of the committee, the committee shall file a public report with the clerk of the House
- ▶ If a violation occurs, the committee can recommend for members to be reprimanded, censured, removed from leadership or chairmanships, or expulsion; employees who violate rules may be recommended for reprimand, suspension, or removal from employment

Massachusetts House

- ▶ The Committee may issue advisory opinions if follow-up requests have been made by the violating party
- ▶ Upon convening for the first session after adoption of the House Rules, a copy of the Code of Ethics shall be issued to every member, officer, and employee

Massachusetts House

- ▶ Members should avoid any transaction or dealings in public and private life that may affect or appear to affect independent judgment in one's official capacity in the House
- ▶ No member shall accept political contributions or compensation except for described by law
- ▶ No member shall serve as a legislative agent
- ▶ No member shall receive or shall permit any compensation to accrue due to undue influence exerted from his or her position in the House
- ▶ No member shall engage in any business or professional activity that requires the release of confidential information gained in one's official role in the House
- ▶ No member shall willingly or knowingly disclose any confidential information
- ▶ No member or employee shall cast a vote for any other member, except for the Clerk as noted, due to voting malfunctioning from the chamber desk

Massachusetts House

- ▶ No member shall use profane, insulting, or abusive language during the course of public debate in the chamber or in testimony before any committee
- ▶ No member shall employ anyone who does not provide services to the House
- ▶ No employee shall engage in outside business during normal House business hours
- ▶ No member shall accept or solicit compensation for non-legislative services that are above the usual and customary value of such services
- ▶ No member shall accept or solicit honorarium for a speech, writing for publication, or other activity from any person or entity with a direct interest in business or legislation before any agency, authority, board, or commission of the Commonwealth which is in excess of the usual and customary value of services
- ▶ No member shall accept any gift from any legislative or executive agent as prohibited by law or from any entity with direct interest in legislation before the legislature

Massachusetts House

- ▶ No member shall convert campaign funds for personal use in excess or reimbursements for legitimate and verifiable campaign expenditures
- ▶ No member shall serve on any committee or vote on any matter in which their private right is immediately concerned, distinct from public interest
- ▶ No member shall violate the confidentiality of any proceeding before the ethics committee
- ▶ Ethics law training shall be conducted for every member, officer, and employee of the House, in addition to MA General Laws and the State Ethics Commission regulations as they apply to members, before every July 1 of the first biennial session of every legislative session
- ▶ Bills involving lobbyists reporting laws, and laws pertaining to ethical conduct of public officials shall be referred to the Committee on Ethics for their report to their relation to the ethics laws of the Commonwealth

Massachusetts Ethics Commission

- ▶ In addition to the self-regulating codes of each legislative chamber and the executive and judicial branches, the independent MA Ethics Commission is responsible for administering and enforcing the conflict of interest law G.L. c. 268A and the financial disclosure law G.L. c. 268B.
- ▶ The commission is a non-partisan and independent state agency consisting of five members who are appointed to serve five year terms.
- ▶ Mission: to foster integrity in public service in state, county, and local government, to promote the public's trust and confidence in that service, and to prevent conflicts between private interests and public duties
- ▶ Training requirements: every two years, all public employees and officials must complete conflict of interest online training (newly elected members must complete within 30 days of beginning public service and every two years thereafter)
- ▶ Every two years, all public employees must be provided a summary of the conflict of interest law and must sign a written acknowledgment upon receipt

Massachusetts Ethics Commission

- ▶ Additionally, the Statement of Financial Interest inspection module allows any member of the public or press to view individuals filings who are required to submit an annual SFI (elected officials)
- ▶ Some restrictions on public employees after they leave public service (one year cooling off period prior to being able to lobby the legislature)
- ▶ Commission has a hotline for inquiries and advice
- ▶ Commission will comply with a request for written advice; response will be received within 30 days
- ▶ You may speak to the Commission's "attorney of the day" for immediate advice

Mass. Conflict of Interest Law

- ▶ G.L. c.268A, amended as of 2011, prepared by State Ethics Commission
- ▶ Key term definitions such as compensation, employee, immediate family, act, agency, particular matter, official responsibility, etc.
- ▶ Corrupt gifts, offers, or promises to influence official acts
- ▶ Gifts, offers, or promises for acts to be performed; solicitation of gifts
- ▶ Other compensation, offers, or gifts; acting as an unauthorized agent of the state
- ▶ Former state employees; acting as an attorney; partners of state employees
- ▶ Financial interests of former state employee relatives or associates for disclosure
- ▶ Conflict of Interests reporting for Public Officials
- ▶ State employment applicants; reporting requirement

Mass. Conflict of Interest Law

- ▶ Financial interests in state agency contracts; application
- ▶ Public building and construction projects
- ▶ Member's of state commissions; prohibited appointments
- ▶ Telecommunications and Energy boards; prohibited lobbying activities
- ▶ Violations, remedies, and civil actions (paying fines; restitution, or returning value) in addition to criminal actions
- ▶ County and Municipal sections

Mass. Financial Disclosure Law

- ▶ G.L. c.268B, amended as of 2011, prepared by State Ethics Commission
- ▶ Key term definitions such as amount, business, candidate for public office, agent, gift, income, public employee and official, political contribution
- ▶ Prepare and publish financial disclosures of public officials; methods of accounting
- ▶ Compile, maintain, and index all reports filed with the Commission to facilitate public access to such reports
- ▶ Inspect disclosures for inaccuracies, fraud, or incompleteness
- ▶ Provide advisory opinions and respond to specific inquiries via written opinions
- ▶ Preserve all statements for a period of six years
- ▶ Act as a civil enforcement agency for violations
- ▶ Be provided with a list of every public official

Mass. Financial Disclosure Law

- ▶ Commission to conduct investigations
- ▶ May turn over to the Attorney General, US Attorney, or district attorney
- ▶ Evidence gathered may be used in criminal trials
- ▶ Commission may require by summons the attendance of witness testimony, and production of books, papers and other records on any matter being investigated—same summons power as state courts
- ▶ All testimony under oath
- ▶ Violations found enable commission to issue an order to the violator to cease any on-going violations, file any report or statement, and/or pay a civil penalty of not more than \$10,000 for each violation (or \$25,000 for a few)
- ▶ Commission may file a civil action in Superior Court to enforce actions

Mass. Financial Disclosure Law

- ▶ SFI information must be provided to the best of the applicant's knowledge:
 - ▶ Financial information of self, immediate family including name and address of any interest/income greater than \$1,000 from each business in which he/she is associated
 - ▶ Identity of all securities and other investments with a fair market value of greater than \$1,000; and any security issued by the Commonwealth
 - ▶ Name and address of each creditor to whom is owed more than \$1,000 and the type of debt owed/names and addresses of creditors who have forgiven a debt
 - ▶ Reimbursements of over \$100 for legislative activities per calendar year
 - ▶ Names and addresses of donors of gifts of over \$100
 - ▶ Real estate value based on most recent tax bill assessment
 - ▶ Honoraria over \$100 per calendar year
 - ▶ Penalties for perjury and confidentiality violations

Mass. Judicial Ethics

- ▶ Judicial ethics governed by the Judicial Ethics Committee
- ▶ Promote independent, fair, and impartial judiciary
- ▶ Judges must maintain dignity of judicial office at all times and avoid impropriety in personal and profession lives
- ▶ Code is not exhaustive of responsibilities, but serves to provide guidance
- ▶ Cannon 1: Judge shall uphold and promote the independence, impartiality, and integrity of the judiciary and avoid impropriety
- ▶ Cannon 2: Judge shall perform duties of office impartially, competently, and diligently

Attorney Ethics in the U.S.

- ▶ Attorney Duties to Client
 - ▶ Duty of Confidentiality
 - ▶ Duty of Loyalty
 - ▶ Duty of Financial Integrity
 - ▶ Duty of Competence
- ▶ Attorney Duties to Others
 - ▶ Duty of Candor to the Public
 - ▶ Duty of Candor to the Court
 - ▶ Duty of Fairness
 - ▶ Duty of Dignity/Decorum
- ▶ Self-regulated by industry and state bar organizations

European Ethics Comparisons

- ▶ Discussions on European Parliamentary Ethics Guidelines; Attorney Ethics, and Judicial Ethics (Bangalore Principles)
- ▶ Other issues

Questions and Answers

The right side of the slide features a decorative graphic composed of several overlapping, semi-transparent green triangles and polygons. The colors range from a light, pale green to a vibrant, saturated lime green. The shapes are arranged in a way that creates a sense of depth and movement, with some shapes appearing to be layered in front of others. The overall effect is a modern, abstract design element.