

ASSEMBLY, No. 2749

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1997

By Assemblyman BARNES

1 **AN ACT** establishing a code of ethics for county prosecutors and their
2 employees and supplementing Title 2A of the New Jersey Statutes.
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4 **BE IT ENACTED** by the *Senate and General Assembly of the State*
5 *of New Jersey*:

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7 1. This act shall be known and may be cited as the "County
8 Prosecutors' Code of Ethics."

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10 2. The Legislative finds and declares that:

11 a. In New Jersey's criminal justice system, county prosecutors and
12 the employees of their offices perform vital and highly sensitive duties;

13 b. Public confidence in the criminal justice system is eroded
14 whenever the public perceives that county prosecutors or their
15 employees are not performing their duties in an impartial, professional
16 manner or that the private interests of county prosecutors and their
17 employees have an influence on the performance of those duties;

18 c. Government has a duty to provide their citizens with standards
19 by which they may determine whether the functions of county
20 prosecutors' offices are being properly performed and to apprise
21 county prosecutors and their employees of the course of conduct
22 which is expected of them while conducting their duties;

23 d. It is the purpose of this act in order to help to insure public
24 confidence in the criminal justice system, by establishing a Statewide
25 code of ethics for county prosecutors and the employees of county
26 prosecutors' offices.

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28 3. As used in this act:

29 a. "employee of a county prosecutor" means any person who is
30 either employed by or assigned to a county prosecutor's office.

31 b. "ethics code" means the code of ethics established by this act.

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33 4. a. A county prosecutor or an employee of a county prosecutor
34 shall not have any interest, financial or otherwise, direct or indirect, or
35 engage in any business or transaction or professional activity which is
36 in conflict with the proper discharge of his duties in the public interest.

37 b. An employee of a county prosecutor shall not engage, directly

1 or indirectly, in any business, trade, profession, trade or occupation
2 which is subject to licensing or regulation by any State, county or
3 municipal agency without obtaining approval for that activity by the
4 county prosecutor.

5 c. A county prosecutor or any employee of a county prosecutor shall
6 not use his official position to secure unwarranted privileges or
7 advantages for himself or others.

8 d. A county prosecutor or an employee of a county prosecutor
9 shall not act in his official capacity in any manner wherein he has a
10 direct or indirect personal financial interest that might reasonably be
11 expected to impair his objectivity or independence of judgment.

12 e. A county prosecutor or an employee of a county prosecutor
13 shall not undertake any employment or service, whether compensated
14 or not, which might reasonably be expected to impair his objectivity
15 and independence of judgment in the exercise of his official duties.

16 f. A county prosecutor or an employee of a county prosecutor shall
17 not solicit, receive or accept any gratuity, gift or other thing of value,
18 either directly or indirectly, under circumstances from which it might
19 reasonable be inferred that such gift, gratuity, or other thing of value
20 was offered or given for the purpose of influencing him in the
21 discharge of his official duties.

22 g. A county prosecutor or an employee of a county prosecutor
23 shall not knowingly and without justification act in any way that might
24 reasonably be expected to create an impression or suspicion among the
25 public having knowledge of his acts that he may be engaged in conduct
26 violative of his trust as the county prosecutor or as an employee of a
27 county prosecutor.

28 h. A county prosecutor or employee shall not attend any
29 conference, convention or meeting relating to the duties and
30 responsibilities of his position at the expense of any organization or
31 agency other than the office of the county prosecutor unless the
32 employee has the approval of the county prosecutor or in the case of
33 a county prosecutor, the approval of the Attorney General.

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35 5. a. An assistant prosecutor shall not engage in other gainful
36 employment except, with the prior written approval of the county
37 prosecutor, for a part-time teaching position at an institute of higher
38 education in a program of law enforcement education.

39 b. An employee of a county prosecutor other than an assistant
40 prosecutor shall not engage in any outside employment without the
41 prior written approval of the prosecutor.

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43 6. An employee of a county prosecutor shall not disclose, other
44 than to law enforcement personnel, any information concerning the
45 operations, investigations or other business of the prosecutor's office
46 which is not generally available to members of the public unless such

1 disclosure is expressly authorized by the county prosecutor.

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3 7. An assistant prosecutor shall not, prior to the final resolution of
4 a criminal proceeding, make any extra-judicial statement for public
5 dissemination which is reasonably likely to interfere with the criminal
6 proceeding.

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8 8. a. An employee of a county prosecutor shall not provide bail or
9 bail costs to any person accused of a criminal offense without the
10 approval of the county prosecutor.

11 b. An employee of a county prosecutor shall not testify as a
12 character or reputation witness on behalf of any person accused of a
13 criminal offense without the prior approval of the county prosecutor.

14 c. An employee of a county prosecutor shall not recommend,
15 contact or assist in obtaining counsel to represent any person accused
16 of a criminal offense.

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18 9. A county prosecutor or an employee of a county prosecutor in
19 making any judgment in his official capacity shall not consider his
20 personal or political advantage, or his personal reputation.

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22 10. A county prosecutor and any employee of a county prosecutor
23 shall insure that no conflict of interest or appearance of conflict is
24 created when engaging any consultant, contract agent, independent
25 contractor or other person to perform a service for the prosecutor's
26 office.

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28 11. a. A county prosecutor or an employee of a county prosecutor
29 shall not engage in any political activity or attend any affair for
30 political purposes.

31 b. As used in this section, "political activity" includes;

32 (1) Any candidacy for elective public or political office;

33 (2) Any holding of an office in, or employment with or working on
34 behalf of any political party, organization or club;

35 (3) Any participation in any political campaign;

36 (4) Any exhibiting of signs concerning political candidates on one's
37 person, vehicle or home;

38 (5) Any use of one's name in connection with any political material;

39 (6) Any purchase, sale or distribution of tickets to any affair held
40 for any political purpose whatsoever;

41 (7) Any contribution to a political party or candidate;

42 (8) Any soliciting or accepting of any contribution either directly
43 or through a third person to or on behalf of any political organization
44 or for any other political purpose whatsoever;

45 (9) Any use of one's official influence to modify the political action
46 of another; and

1 (10) Any working at the polls during election time or as an election
2 official at any time.

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4 12. a. An employee of a county prosecutor shall not serve as an
5 officer, trustee, director or member of any charitable, civic or
6 professional organization, association or committee without obtaining
7 the prior approval of the county prosecutor.

8 b. An employee of a county prosecutor shall not serve on any
9 public body or any governmental position without the prior written
10 approval of the county prosecutor.

11 c. An employee of a county prosecutor shall not use his official
12 title or his name in any written materials issued on behalf of any public
13 body or charitable, civic, religious or professional organization,
14 association or committee.

15 d. An employee of a county prosecutor shall not engage in any
16 fund-raising activity without the prior written approval of the county
17 prosecutor.

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19 13. a. A former assistant prosecutor shall not appear in any
20 criminal matter in any capacity against the State in the county by
21 which he was employed for a period of six months from the date of
22 termination of his public employment. This prescription does not
23 foreclose such appearances by a law firm with which the former
24 assistant prosecutor is associated.

25 b. A former assistant prosecutor and any law firm with which he is
26 associated shall not represent any person in any matter (1) in which he
27 participated to any extent while an assistant prosecutor including but
28 not limited to any aspect of investigation, trial preparation or trial; (2)
29 for which he had any responsibility, whether exercised or not; or (3)
30 about which he became aware of any facts or other information.

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32 14. An assistant prosecutor or a person employed by a county
33 prosecutor as a detective or investigator shall not privately retain or
34 be represented in his personal legal affairs by any attorney who
35 maintains of active criminal practice within the county in which the
36 person is employed.

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38 15. a. An employee of a county prosecutor's office shall not testify
39 in any civil action as a fact witness without the prior approval of the
40 county prosecutor, or without prior notification to the county
41 prosecutor when the testimony is given pursuant to an order of the
42 court.

43 b. An employee of a county prosecutor shall not testify in any civil
44 action as to his expert opinion on any matter without the prior
45 approval of the prosecutor. The county prosecutor shall determine
46 whether a fee shall be remitted to the county for such expert testimony

1 by the litigant seeking to offer that testimony.

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3 16. With respect to the implementation of the provisions of the
4 ethics code, the Attorney General shall have the following powers:

5 a. To initiate, receive, hear and review complaints and hold
6 hearings with regard to possible violations of the ethics code;

7 b. To issue subpoenas for the production of documents and the
8 attendance of witnesses with respect to its investigation of any
9 complaint or to the holding of a hearing;

10 c. To render advisory opinions as to whether a given set of facts
11 and circumstances would constitute a violation of the ethics code;

12 d. To enforce the provisions of the ethics code and to impose
13 penalties for the violation thereof as are authorized by this act; and

14 e. To adopt rules and regulations pursuant to the "Administrative
15 Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and to do other
16 things as are necessary to implement the purposes of this act.

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18 17. A county prosecutor or employee of a county prosecutor may
19 request and obtain from the Attorney General an advisory opinion as
20 to whether any proposed activity or conduct would in its opinion
21 constitute a violation of the provisions of the ethics code. Advisory
22 opinions of the Attorney General shall not be made public, except
23 when the Attorney General directs that the opinion be made public.
24 Public advisory opinions shall not disclose the name of the requester
25 unless the Attorney General in directing that the opinion be made
26 public so determines.

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28 18. The Attorney General, upon receipt of a signed written
29 complaint by any person alleging that the conduct of a county
30 prosecutor or an employee of a county prosecutor is in conflict with
31 the provisions of the ethics code, shall acknowledge receipt of the
32 complaint within 30 days of receipt and initiate an investigation
33 concerning the facts and circumstances set forth in the complaint. The
34 Attorney General shall make a determination as to whether the
35 complaint is within its jurisdiction or frivolous or without any
36 reasonable factual basis. If the Attorney General shall conclude that
37 the complaint is outside its jurisdiction, frivolous or without factual
38 basis, it shall reduce that conclusion to writing and shall transmit a
39 copy thereof to the complainant and to the county prosecutor or
40 employee of a county prosecutor against whom the complaint was
41 filed. Otherwise the Attorney General shall notify the county
42 prosecutor or employee of a county prosecutor against whom the
43 complaint was filed of the nature of the complaint and the facts and
44 circumstances set forth therein. The county prosecutor or an
45 employee of a county prosecutor shall have an opportunity to present
46 the Attorney General with any statement or information concerning the

1 complaint which he wishes. Thereafter, if the Attorney General
2 determines that a reasonable doubt exists as to whether a county
3 prosecutor or employee of a county prosecutor is in conflict with the
4 provisions of the ethics code, the Attorney General shall conduct a
5 hearing in the manner prescribed by section 21 of this act concerning
6 the possible violation and any other facts and circumstances which may
7 have come to the attention of the Attorney General with respect to the
8 conduct of the count prosecutor or employee of a county prosecutor.
9 The Attorney General shall render a decision as to whether the
10 conduct of a county prosecutor or employee of a county prosecutor is
11 in conflict with the provisions of the ethics code. A final decision of
12 the Attorney General may be appealed in same manner as any other
13 final State agency decision.

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15 19. A county prosecutor or employee of county prosecutor found
16 guilty by Attorney General of the violation of any provision of this
17 ethics code, shall be fined not less than \$100.00 nor more than
18 \$500.00, which penalty may be collected in a summary proceeding
19 pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).
20 The Attorney General may also recommend the person's removal,
21 demotion, suspension or any disciplinary action which the Attorney
22 General deems appropriate.

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24 20. A finding by the Attorney General that a county prosecutor or
25 employee of the county prosecutor is guilty of violation of the ethics
26 code shall be sufficient cause for his removal, suspension, demotion or
27 other disciplinary action. When a person who is in the career service
28 is charged with violating the provisions of the ethics code, the
29 procedure leading to removal, suspension, demotion or other
30 disciplinary action shall be governed by any applicable procedures of
31 Title 11A of the New Jersey Statutes and the rules promulgated
32 pursuant thereto.

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34 21. All hearings required pursuant to this act shall be conducted in
35 conformity with the rules and procedures, insofar as they may be
36 applicable, provided for hearings by a State agency in contested cases
37 under the "Administrative Procedure Act," P.L.1968, c. 410
38 (C52:14B-1 et seq.).

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40 22. This act shall take effect immediately.

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43 STATEMENT

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45 This bill would establish the "County Prosecutors' Code of Ethics."
46 This code would apply both to county prosecutors and all persons

1 employed in their offices. The code would generally prohibit county
2 prosecutors and their employees from engaging in business or
3 professional activities which conflict with the proper discharge of their
4 duties.

5 The code would specially prohibit a county prosecutor and any
6 employee of a county prosecutor from using their official position to
7 secure unwarranted privileges for himself or others and from acting in
8 an official capacity in matters in which he has a direct or indirect
9 financial interest.

10 Other provisions of the bill would prohibit county prosecutors and
11 their employees from accepting gifts and from engaging in political
12 activities.

13 In addition, the code would establish restrictions on certain
14 charitable and civic activities and establish post-employment
15 restrictions for assistant prosecutors.

16 The bill provides that the Attorney General would be responsible
17 for enforcing the ethics code. Violations would be punishable by a
18 fine of between \$100.00 and \$500.00. The Attorney General could
19 also recommendation further disciplinary action such as removal,
20 suspension or demotion.

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25 Establishes the "County Prosecutors' Code of Ethics."