

**GENERAL DISTRIBUTION**

**WEST VIRGINIA  
DIVISION OF CORRECTIONS  
& REHABILITATION**

**NUMBER: 141.03**

**EFFECTIVE DATE: 29 August 2022**

**SUBJECT: OTHER EMPLOYMENT &  
CERTAIN VOLUNTEER  
ACTIVITIES**

# **POLICY DIRECTIVE**

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**PURPOSE:**

To provide guidelines for employees who seek to hold other employment or participate in certain volunteer activities.

**REFERENCE:**

WV Code 6B-1-1 *et seq.* and 15A-3-11; 143CSR1 Title 143 Legislative Rule of the West Virginia Division of Personnel; and WV Division of Personnel Policy DOP-P21.

**RESPONSIBILITY:**

No additional written instructions on this subject are required.

**CANCELLATION:**

Any previous written instruction on this subject including DCR Policy Directive 141.03, dated 15 June 2019.

**APPLICABILITY:**

All facilities and work units within the Division of Corrections and Rehabilitation (DCR). This Policy is available for general distribution.

**DEFINITIONS:**

**Appointing Authority:** The Chief Executive Officer of the facility or work unit.

**Employee:** For the purposes of this Policy, any employee of the Division of Corrections and Rehabilitation (DCR).

**POLICY:**

- I. Employees shall familiarize themselves with the contents of the Division of Personnel's Policy on Other Employment and Certain Volunteer Activities (**Attachment #1**).
- II. Employees shall also be familiar with §143-1-17.1 of the Division of Personnel's Administrative Rule which reads:  
  
"Other Employment and Certain Volunteer Activity – Employees shall not hold other public office, secondary employment or participate in volunteer activity conflicting with their employment in the classified service. Determination of the conflict shall be made jointly by the appointing authority and the Board, or may be specifically delegated by the Board to the appointing authority, who shall consider whether the other employment or volunteer activity: (1) will be in conflict with the interests of the agency; (2) will interfere with the performance of the employee's official duties; (3) will use or appear to use information obtained in connection with official duties which is not generally available to the public; or, (4) may reasonably be regarded as official action."  
  
III. Prior to engaging in other employment/volunteer activity, an employee shall complete and sign Part I of the Request for Determination Regarding Other Employment and Certain Volunteer Activity (DOP-OE1) as contained in **Attachment #1** and submit to their immediate supervisor.
  - A. The employee's immediate supervisor shall complete Part II and forward it to the Appointing Authority or designee.
  - B. Within thirty (3) calendar days of receipt, the Appointing Authority or designee shall complete Part III and take action as required.
  - C. The original completed request shall be retained in the employee's personnel file with copies of the determination to the employee, the immediate supervisor and the Division of Personnel.IV. No employee shall hold secondary employment requiring the use of the Division's name, equipment, uniform or records. Unauthorized use of the uniform, badge, identification card, or other insignia is a misdemeanor and punishable by a fine and jail time.

**ATTACHMENT(S):**

- #1 WV Division of Personnel Policy DOP-P21 Other Employment and Certain Volunteer Activities; Request Form (DOP-OE1) and Instructions (11 pages)

APPROVED SIGNATURE: \_\_\_\_\_

  
Brad Douglas, Acting Commissioner

  
Date



## OTHER EMPLOYMENT AND CERTAIN VOLUNTEER ACTIVITIES

- I. **PURPOSE:** The purpose of this policy is to provide standardized procedures for making a determination whether other employment and certain volunteer activities may violate the *West Virginia Governmental Ethics Act* W. Va. Code § 6B-1-1, *et seq.*, and/or the West Virginia Division of Personnel (DOP), *Administrative Rule*, W. Va. Code R. § 143-1-17.1, which, in pertinent part, prohibits an employee of the State of West Virginia and its political subdivisions from engaging in other employment or volunteer activities that conflict with the employee's primary employment with the State of West Virginia.

The information and procedures in this policy should not be construed to supersede any State or federal law or regulation. In the event of any inconsistencies between policy and law and/or regulation, the statutory and/or regulatory provisions shall prevail.

## II. DEFINITIONS:

- A. **Agency.** – Any authority, board, bureau, commission, division, or other entity of state government, however, designated, transferred to, or incorporated in one of the departments created in W. Va. Code § 5F-1-2, as well as any affiliated county or municipal agencies. Provided that individual districts, offices, regions, sections, and units within the same agency, however, designated, shall not be considered a separate agency.
- B. **Appointing Authority.** – The executive or head of a department or agency who is authorized by statute to appoint employees in the classified or classified-exempt service. By written notification to the Director of Personnel, the appointing authority may delegate specific powers authorized by this rule to persons who satisfy the definition of employee as established by the DOP *Administrative Rule*, W. Va. Code R. § 143-1-1 *et seq.*
- C. **Classified Service.** – Those positions which satisfy the definitions for "class" and "classify" and which are covered under the DOP merit system standards as defined in the DOP *Administrative Rule*.
- D. **Other Employment.** – Any form of employment or business relationship outside an employee's primary employment in the classified service involving the provision of personal services by the employee and from which the employee receives compensation.
- E. **Volunteer Activity.** – Any type of volunteer activity involving the provision of personal services by the employee to the benefit of another person, group, or organization and from which the employee receives no compensation or social gain.

- II. **POLICY:** State service shall be the primary employment of every employee. Other employment/volunteer activity must not interfere with, conflict with, or have the appearance of a conflict with an employee's primary employment with the State; conflict with the interests of the State agency; interfere with the performance of the employee's official duties; use proprietary State





information; create the appearance of official State action, or entail appearing before the State agency for which the employee is employed on behalf of the other employer or volunteer organization in any capacity. Employees called or ordered to active duty by a properly designated authority are the only exception to this expectation. In accordance with the DOP *Administrative Rule*, all officers and employees of the State, county, or municipal government hired for permanent employment in the classified service who are ordered or called to active duty by properly designated authority are entitled to leave. While on military leave, military service is the employee's primary employment.

General prohibitions for all employees engaging in other employment/volunteer activity include:

- A. An employee shall not provide for personal gain any information or services related to the duties and responsibilities of their primary position with the State.
- B. An employee shall not use State work time to perform work for another employer or volunteer activity.
- C. An employee shall not use State supplies, technology, or equipment to perform work for the other employer or volunteer activity.
- D. An employee shall not allow the duties of the other employment/volunteer activity duties to interfere with the assigned duties and responsibilities of their primary employment with the State.
- E. If applicable, an employee must respond to any on-call demands of their primary employment with the State, as directed by their supervisors during periods of which they are engaged in other employment/volunteer activity.
- F. An employee shall not use the primary employment with the State to motivate or provide preferential treatment to any person involved with the other employment/volunteer activity because of services being rendered to their family members.

**IV. STANDARDS:** The appointing authority shall consider the following factors when determining if a review of other employment/volunteer activity is required by the West Virginia Ethics Commission and/or the State Personnel Board. A request for a determination is not required for certain volunteer activities which clearly do not conflict with the interests of the agency and have no nexus to the duties of the primary state employment. These may include but are not limited to participation in non-partisan civic organizations, philanthropic activities, social clubs, athletics, and religious organizations, etc.

- A. An employee is required to obtain an Ethics Opinion if the appointing authority has reason to believe: The other employment/volunteer activity is with a person or business over which the employee directly, or through subordinates, exercises regulatory authority in the employee's official capacity as a State employee.
  - 1. The employee will receive private pay for providing information or services that the employee's position with the primary employer is required to provide to the public at no cost.



2. The employee could access or use confidential agency information for the benefit of the other employer/volunteer activity. The employee may use State time, supplies, technology, or equipment to perform work for the other employer or while engaging in the volunteer activity.
- B. The West Virginia Ethics Commission has determined an Ethics Opinion is not required in instances where an employee desires to perform services for multiple State employers. However, the appointing authority must still evaluate the request to ensure that while working for the primary State employer, the employee does not perform work for other State employers in violation of the DOP *Administrative Rule*. Prior to commencing employment with a second state agency, an employee must consult with both agency human resources as multiple appointments impact compensation and benefits at each agency. The position in which the employee is budgeted at a Full-Time Equivalent (FTE) of 1.0 shall be identified as the employee's primary position. In the event the employee holds two FTE or two Part-Time positions, the primary position will be the position in which the employee was first employed.
  - C. The appointing authority shall deny the request for other employment/volunteer activity if it is determined through an Ethics Opinion a conflict exists between the employee's primary employment with the State and the requested other employment/volunteer activity.

If the Ethics Opinion is inconclusive, the appointing authority may deny the request for other employment/volunteer activity or request a determination by the State Personnel Board because the appointing authority has reason to believe:

1. The other employment/volunteer activity may conflict or give the appearance of a conflict with the mission or goals of the agency.
2. The other employment/volunteer activity may interfere with the performance of the employee's official duties.
3. The employee will use or appear to use information obtained in connection with the employee's official duties, which is not generally available to the public.
4. The other employment/volunteer activity may reasonably be regarded as official State action.

The appointing authority must provide a copy of the Ethics Opinion when requesting a determination by the State Personnel Board.

V. **PROCEDURES:** Appointing authorities shall notify all employees of the provisions of Section 17.1 of the DOP *Administrative Rule*, and provide them with copies of this policy, or a means to access it, so that employees may submit requests for a determination regarding other employment/volunteer activities prior to engaging in such employment/activities. An appointing authority may modify the Request for Determination Regarding Other Employment and Certain Volunteer Activity form to include appropriate internal review and approval levels, but must retain the specified content and criteria, as defined in this policy.

- A. Prior to engaging in other employment/volunteer activity, an employee must obtain a determination that there is no conflict with their primary employment with the State.





1. An employee shall notify their primary employer with the State of the intent to begin other employment/volunteer activity by:
    - a. Completing Part I of the Request for a Determination Regarding Other Employment and Certain Volunteer Activity form (DOP-OE1), providing a functional job description of your primary duties. A class specification does not provide sufficient position-specific duties and will not be accepted.
    - b. Signing the request acknowledging your understanding of and compliance with the Other Employment and Certain Volunteer Activities policy (DOP-P21).
    - c. Submitting the signed request form to the immediate supervisor or the appropriate agency representative.
  2. Upon receipt of the request for a determination, the immediate supervisor shall advise the employee that prior to commencing or continuing such other employment/volunteer activity, a determination as to the potential for conflict between their primary employment with the State and the proposed other employment/volunteer activity must be obtained.
  3. An employee must submit a separate request for a determination when any change of duties in their primary employment with the State or other employment/volunteer activity occurs and for each other employment or volunteer activity, the employee desires to pursue.
  4. If, at any time, a potential conflict between the primary employment with the State and other employment/volunteer activity occurs, the employee shall simultaneously inform both the immediate supervisor of both their primary employment with the State and the other employer/volunteer activity.
  5. An employee shall terminate the other employment/volunteer activity at any time the primary State employer determines the other employment/volunteer activity interferes with the employee's performance of their primary job duties of the State or conflicts with the interests of the State.
- B. Within thirty (30) calendar days of receipt of the completed Request for Determination Regarding Other Employment and Volunteer Activity form, the appointing authority or designee shall notify the employee of the determination and take one of the four actions, as outlined below.
1. Determine there is no conflict with the primary employment with the State. Complete Part III of the form and forward it to the appropriate primary employing agency office; OR
  2. Determine there is no conflict with the primary employment with the State but that certain limitations and/or restrictions are necessary. The limitations shall be noted on Part III, Step 3, of the form and forwarded to the appropriate primary employing agency office; OR
  3. Notify the employee the request requires further review as provided in Section IV of this policy due to a potential conflict with the employee's primary employment with the State and that the other employment/volunteer activity must not commence or must not continue until a final determination is made; OR



4. Determine there is a conflict with the primary employment with the State.
  - a. Complete Part III of the form and provide a justification for the determination. This justification may be based on a determination by the West Virginia Ethics Commission or the State Personnel Board that the other employment/volunteer activity would be inappropriate or unacceptable.
  - b. Notify the employee that the other employment/volunteer activity must not commence, or must not continue.
  - c. Specify the deadline for the termination of the other employment (based on the degree of conflict) or volunteer activity.
  - d. After being informed that the request was denied, if the employee chooses to commence or continue the other employment/volunteer activity, the employer shall notify the employee that failure to comply with the appointing authority's lawful directive is deemed insubordination for which disciplinary action, up to and including dismissal may be issued.
  - e. Forward the form to the appropriate primary employing agency office for processing.
- C. The appointing authority or designee shall provide a copy of the final determination to the employee, the immediate supervisor, and the DOP.

**VI. REFERENCES:**

- A. W. Va. Code § 6B-1-1, *et seq*, *West Virginia Governmental Ethics Act*.
- B. West Virginia Division of Personnel, *Administrative Rule*, W. Va. Code R. § 143-1-17.1, *Other Employment and Certain Volunteer Activity*.

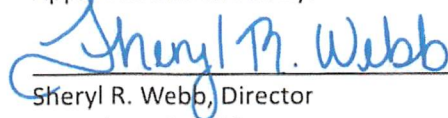
**VII. EFFECTIVE DATE:** October 1, 2003.

**VIII. REVISION:**

- A. Previous Revisions: October 1, 2003, and May 1, 2007.
- B. Latest Revision: June 15, 2022

**IX. POLICY NUMBER:** DOP-P21.

Approved and Issued By:

  
\_\_\_\_\_  
Sheryl R. Webb, Director  
Date: June 6, 2022



### Request for Determination Regarding Other Employment and Certain Volunteer Activity

<b>This request is for (check one)</b> A separate request for determination is required for each employment or volunteer activity or when any change of duties in the primary employment with the State or other employment/volunteer activity occur.	
<b>Other Employment</b> <input type="checkbox"/> State Agency <input type="checkbox"/> Non-State Employer	<b>Volunteer Activity Requiring Determination</b>
<b>PART I - TO BE COMPLETED BY EMPLOYEE (please print or type):</b>	
<b>Employee Name:</b>	<b>OASIS ID #:</b>
<b>Job Classification:</b>	<b>Functional Job Title (If applicable):</b>
<b>Employer (List Agency, Division, Section, and/or Unit, as appropriate):</b>	
<b>Work Location/Mailing Address:</b>	
<b>Work Phone:</b>	<b>Work Email:</b>
<b>Immediate Supervisor:</b>	<b>Supervisor Email:</b>
<b>Description of Primary State Duties and Responsibilities (functional job description)</b>	





Name of Other Employer/Volunteer Organization:	Employer/Business/Activity Type:
Description of Other Employment/Volunteer Duties and Responsibilities - attach additional pages if necessary.	
By signing below, I acknowledge I have read and understand compliance with the Other Employment and Certain Volunteer Activities policy (DOP-P21).	
Employee's Signature:	Date Signed:
<b>PART II - TO BE COMPLETED BY IMMEDIATE SUPERVISOR:</b>	
<input type="checkbox"/> <b>NO CONFLICT:</b> Forward to appointing authority or designee for final determination.	
<input type="checkbox"/> <b>POTENTIAL CONFLICT:</b> Describe the potential conflict below and forward to appointing authority or designee for final determination.	
<input type="checkbox"/> Use of public office for private gain. <input type="checkbox"/> Association may result in prohibited interest in profits or benefits of state contracts. <input type="checkbox"/> May use confidential State information obtained in course of official duties. <input type="checkbox"/> May conflict with the agency's ratemaking, application, or regulatory functions. <input type="checkbox"/> Constitutes employment by an entity regulate by a State agency. <input type="checkbox"/> Other (please explain below):	
Immediate Supervisor's Signature:	Date Signed:
Submit to Appointing Authority or Designee	Email:



<b>PART III - TO BE COMPLETED BY APPOINTING AUTHORITY/DESIGNEE</b>
<input type="checkbox"/> <b>NO CONFLICT:</b> Other employment/volunteer activity is approved. (Proceed to step 3)
<input type="checkbox"/> <b>POTENTIAL CONFLICT:</b> A WV Ethics Commission Review is Warranted (Proceed to step 1.)
<input type="checkbox"/> <b>CONFLICT:</b> The Appointing Authority has identified a conflict with the West Virginia Governmental Ethics Act Va. Code § 6B-1-1, <i>et seq</i> , and/or the West Virginia Division of Personnel (DOP), <i>Administrative Rule</i> , W. Va. Code R. § 143-1-17.1. (Proceed to step 3.)
<p><b>Step 1: POTENTIAL CONFLICT- A WV Ethics Commission Review is Warranted - check <u>all</u> that apply:</b> Employee will be advised that he/she must obtain a West Virginia Ethics Commission opinion, due to potential conflict with the Ethics Act as noted below:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Use of public office for private gain.</li> <li><input type="checkbox"/> Association may result in prohibited interest in profits or benefits of state contracts.</li> <li><input type="checkbox"/> May use confidential State information obtained in course of official duties.</li> <li><input type="checkbox"/> May conflict with the agency's ratemaking, application, or regulatory functions.</li> <li><input type="checkbox"/> Constitutes employment by an entity regulated by a State agency.</li> <li><input type="checkbox"/> Other (please explain below):</li> </ul>
<p><i>Employee shall be advised that he/she must resubmit the original request to the employer representative with Ethics Opinion attached. If the Ethics Opinion determines a potential conflict may exist, the Appointing Authority may deny the request or request a determination review by the State Personnel Board.</i></p>
<b>ETHICS OPINION:</b>
<input type="checkbox"/> <b>NO CONFLICT:</b> (Proceed to step 3)
<input type="checkbox"/> <b>POTENTIAL CONFLICT:</b> If the Ethics Opinion is inconclusive or indicates no conflict exists with the Ethics Act but the appointing authority has reason to believe a conflict exists with the interests of the agency, the agency may deny the request or request a determination by the State Personnel Board. (To request a State Personnel Board review, proceed to Step 2.)
<input type="checkbox"/> <b>CONFLICT:</b> A conflict with the <i>West Virginia Governmental Ethics Act</i> has been determined by the West Virginia Ethics Commission. (Proceed to step 3.)



**STEP 2: STATE PERSONNEL BOARD REVIEW IS REQUESTED - check all that apply:**

Appointing Authority or Designee must submit the original request and supporting documentation, including any Ethics Opinions, to the State Personnel Board for review and determination due to a potential employment conflict, as noted below:

- Apparent conflict with the interests/mission of the State agency.
- Potential interference with the performance of the State agency.
- May use or appear to use proprietary information to obtained through official State Duties.
- Secondary employment/volunteer activity may reasonably be regarded as official state action.
- Other (please explain below):

<b>State Personnel Board Decision Received on:</b>	
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**STEP 3: FINAL DECISION**

- NO CONFLICT** - Other employment/volunteer activity is approved.
- POTENTIAL CONFLICT** - Other employment/volunteer activity will be permitted with the limitations and/or restrictions provided below.
- CONFLICT** – Request for other employment/volunteer activity is denied due to a conflict as described below.

**A. CONFLICT; LIMITATIONS; RESTRICTIONS:**

<b>Appointing Authority/Designee Name:</b>	
<b>Appointing Authority/Designee Signature:</b>	<b>Date Signed</b>





<b>PART IV – TO BE COMPLETED BY THE APPROPRATE PRIMARY EMPLOYING AGENCY OFFICIAL:</b>	
<b>Mandatory Agency Notifications:</b>	<b>Email Address &amp; Date Notification Made:</b>
Employee	
Employee Supervisor	
Division of Personnel	

NOTE: Agencies may modify this form to include appropriate internal review and approval levels but must retain the specified content and the criteria as defined in the *West Virginia Governmental Ethics Act* (W. Va. Code § 6B-1- 1, et. seq.) and the Division of Personnel's *Administrative Rule*, (W. Va. Code R. § 143 1-1, et. seq.).



## OTHER EMPLOYMENT AND CERTAIN VOLUNTEER ACTIVITY REQUEST INSTRUCTIONS

Prior to engaging in other employment and certain volunteer activities, an employee must request a written determination from their primary employing agency whether the proposed other employment/volunteer activity may interfere, conflict with, or has the appearance of a conflict with the duties and responsibilities of their primary employment with the State.

### EMPLOYEE RESPONSIBILITIES:

1. Fully complete and submit Part I of the Request for Determination Regarding Other Employment and Certain Volunteer Activity form (DOP-OE1).
  - Mark the appropriate box to indicate if the request is for other employment or a voluntary activity requiring a determination. If the request is for other employment, indicate if the employment is with another State agency or outside employer.
  - Provide a functional job description of your primary duties. A class specification does not provide the specific information necessary to make a determination and will not be accepted.
2. Acknowledge your understanding of and compliance with the Other Employment and Certain Volunteer Activities policy (DOP-P21) by signing the Request for Determination Regarding Other Employment and Certain Volunteer Activity form (DOP-OE1).
3. Submit the completed request to your immediate supervisor of the primary employing State agency.
4. A separate determination request must be completed for each proposed employment/volunteer activity.

### EMPLOYER RESPONSIBILITIES:

1. Appointing Authorities shall inform employees of the provisions of Section 17.1 of the DOP *Administrative Rule* and provide them with copies of this policy or a means to access it so that employees may submit timely requests for a determination regarding other employment and certain volunteer activities prior to engaging in such employment/activities.
2. After evaluating the request, the immediate supervisor will complete Part II of the Request for Determination Regarding Other Employment and Certain Volunteer Activity form (DOP-OE1) and forward the request to the Appointing Authority or designee for completion of Part III and final determination.
3. Within thirty (30) calendar days of receipt of the Request for Determination Regarding Other Employment and Certain Volunteer Activity form (DOP-OE1), the Appointing Authority or designee shall notify the employee and appropriate agency staff the request requires the employee to obtain an Ethics Opinion or of the agency's final determination by forwarding a copy of the completed determination to the employee, and the immediate supervisor.
4. The original completed request shall be retained in the employee's agency personnel file, with a copy forwarded to the Division of Personnel.