
Public Comments Received and Addressed

31003CP – Conflict of Interest

December 2020 Modifications

Summary of Public Comments

The majority of public comments concentrated around the following substantive areas:

1. Definitions section: perceived breadth of definitions (§ III.A–B)
2. “Knows, or reasonably should have known” language (§ IV.E)
3. Use of the term “loyalty” to describe employees’ duties to the College (employees “are expected to devote their primary professional loyalty, time, and energy to their position at Montgomery College”) (§ XIII.A)
4. Scope of activities encompassed by the “conflict of commitment” definition (§ XIII.B)
5. Disclosure of outside employment (§ XIII.E.2)
6. Use of College resources: perception that this might impact union activities (§ XVI.A)
7. Personal use of College email, Zoom accounts, etc. while in remote work status (§ XVI.C)
8. General concern that no appeals mechanism is provided
9. General concern that the modifications could negatively affect unions

Comments Addressed

1. Definitions section: perceived breadth of definitions (§ III.A–B)
 - Discussed by PEC during Phase I.
 - Other P&Ps establishing restrictions based on perception:
 - ▶ [31104 – Political Activity—President; Designated College Officials](#)
§§ I, II
 - ▶ [39001CP – College Ombuds](#)
§ III.F, Ombuds Ethical Standards
 - ▶ [66001CP – Acceptable Use of Information Technology](#)
§ II.B.6, User Responsibilities
2. “Knows, or reasonably should have known” language (§ IV.E)
 - Discussed by PEC during Phase I.
 - This phrase is commonly used in legislation.
 - Other instances of the “reasonably should have known” standard in the College’s P&Ps include:
 - ▶ **31001CP – Sexual Misconduct**
§ III.D, Definition of “consent”
“It is a violation of Policy 31001 to engage in sexual activity with someone whom one should know to be — or based on the circumstances **should reasonably have known to be** — mentally or physically incapacitated.”
 - ▶ **31006CP – Equal Employment Opportunity and Non-Discrimination**
§ II.A.1, Complaint Procedure: Intake, Investigation, and Recommendation
“An employee shall present a complaint under this Procedure within 180 calendar days of the date of that incident or the date the employee **should reasonably have known** of the event underlying the complaint.”

- ▶ **34002CP – Disciplinary Action and Suspension**
§ II.S, Reasons for Disciplinary Action
“Causing false information to be presented before any administrative proceeding of the College when a person knew or **reasonably should have known** that the information was false”
 - ▶ **64002CP – Professional Liability**
§ III.A, Claims Procedures for College Employees
“An employee shall give written notice to the General Counsel, through the appropriate administrative supervisor(s), of any act or occurrence involving a claim, demand or other item of cost sought to be indemnified, within one working day after the occurrence of such act or after the employee **should reasonably have knowledge** of the occurrence of such act”
3. Use of the term “loyalty” to describe employees’ duties to the College (employees “are expected to devote their primary professional loyalty, time, and energy to their position at Montgomery College”) (§ XIII.A)
 - While it is well established in the law that all employees owe a duty of loyalty to their employers, the term “loyalty” has been withdrawn from the text of the procedure.
 4. Scope of activities encompassed by the “conflict of commitment” definition (§ XIII.B)
 - Discussed by PEC during Phase I.
 - Public comments focused on union activity, religious activities, and community service.
 - During the Phase I PEC review, a specific exemption was provided for external activities—such as professional associations or affinity groups—that fall within the employee’s scope of work or directly advance the employee’s core responsibilities to the College.
 - A provision also expressly exempts for union activities from disclosure.
 - The definition of “conflict of commitment” is tailored to clarify that a conflict of commitment arises *only* when other activities burden or interfere with an employee’s primary obligations to the College. The modifications neither state nor imply that the College will regulate what an employee does on his or her own time, unless those personal activities are impeding the employee’s ability to fully perform their professional responsibilities to the College.
 5. Disclosure of outside employment (§ XIII.E.2)
 - Comments assert that this is too invasive: “[I]t seems that an employee that may need to have a second or third job to supplement their income can only do so with the permission of the college or that [MC] is saying what job a person can have or where the person can seek employment.”
 - One suggestion was that “outside employment issues [be left] to the employee’s supervisor.”
 - The modifications ask employees to disclose the nature and extent of the outside employment to OCRE. This provides employees one central location for disclosure, rather than leaving them uncertain about where/how to disclose. It also helps resolve uncertainty for supervisors, who often are not well-versed in what constitutes a conflict of interest. OCRE has received many inquiries from supervisors who were first in line to hear an employee’s questions/disclosure, but who referred the questions to OCRE because the supervisor did not feel confident in providing guidance on conflicts of interest.
 - Establishing a central receiving point for disclosures of this nature also helps reinforce consistency across the organization: where one supervisor might have been broadly permissive of disclosed outside employment, another may have been more stringent, resulting in inequity in how outside employment was handled.

6. Use of College resources: perception that this might impact union activities (§ XVI.A)
 - Comments highlighted that “The union has used rooms in college buildings to hold meetings as well as events to which students and faculty are invited. . . [The unions] generally use MC email as a means of publicizing these events or meetings.”
 - In response to public comments, a new subsection has been added to clarify that union use of College resources—to the extent secured by the collective bargaining agreements—is permitted.
7. Personal use of College email, Zoom accounts, etc. while in remote work status (§ XVI.C)
 - The prohibition on using College resources for personal activities predates these modifications (present in the version of the procedure approved in April 28, 2014). No changes have been made to this section, except that references to “mimeograph and photocopy machines, other word-processing equipment, mail facilities, messenger services” have been updated to include software and email servers.
 - Comments request that Zoom and College email be permitted to be used for personal matters, because of the remote work setting. Best practice is for employees to use their own personal accounts for such activities.
 - As a taxpayer-supported institution, the College has a responsibility to ensure that its resources are used for the specific educational or support purposes for which they are authorized.
8. General concern that no appeals mechanism is provided
 - If any disciplinary action were to arise from the Conflict of Interest procedure, it would be subject to the grievance procedures—including appeals mechanisms—already established (pursuant to the collective bargaining agreements for bargaining staff, and pursuant to 34101 for non-bargaining staff).
9. General concern that the modifications could negatively affect unions
 - The modifications are written to apply consistently across all employee groups, bargaining and non-bargaining.
 - The only two sections which specifically apply to union activities occur in lines 466–67 and 655–57. Both of these sections afford protections for union activity.