

Our Agenda

Ethics Restrictions

1. Conflicts of Interest
2. Gifts and Favors
3. “Insider Training”
4. Nepotism

Other Legal Requirements

5. Transparency
 - Open Meetings
 - Public Records
 - Closed Sessions
6. Bidding Requirements



Instructions for Credit

ABC Board Members

- Form available at **END** of presentation
- Keep **top portion** on file in local ABC Board office
- Fax or email **bottom portion** to Laurie Lee at State ABC Commission

Fax: 919-661-5927
Email: laurie.lee@abc.nc.gov

Attorneys CLE

- Can self-report to State Bar

Other Ethics Training Requirements

- Does **NOT** count toward local elected officials’ ethics training requirement or State Ethics Act ethics training requirement

ETHICS RESTRICTIONS



Basic Principle



Public officials should **not** use their official position for private benefit or gain

Key Concepts

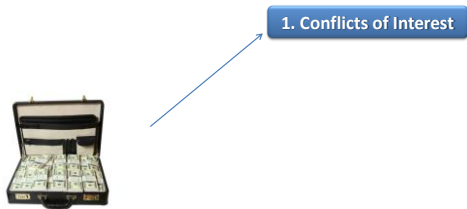
1. Your conduct involves both **legal requirements** and **ethical considerations**.
2. You have a **choice** about how to act; you must evaluate legal and ethical factors in deciding how to act.



Deciding How to Act: Two Questions

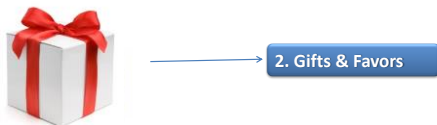


Ethics Restrictions



Apply to all local ABC Board members AND employees

Ethics Restrictions



Apply to all local ABC Board members AND employees

Ethics Restrictions



3. Insider Trading

Apply to all local ABC Board members AND employees

Ethics Restrictions



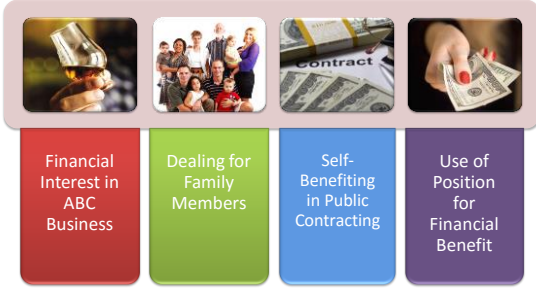
4. Nepotism

Apply to all local ABC Board members AND employees

CONFLICTS OF INTEREST



Conflicts of Interest



Financial Interest in ABC Business

(G.S. 18B-201(a))



Family member includes anyone related by blood or marriage to the first degree (includes step's and in-laws)

Financial Interest in ABC Business

(G.S. 18B-201(a))



Financial interest includes having or controlling directly or indirectly

Financial Interest in ABC Business

(G.S. 18B-201(a))



Commercial alcoholic beverage enterprise includes a business required to have an ABC permit

Financial Interest in ABC Business

(G.S. 18B-201(a))



Cannot be employed by or serve on ABC board

Dealing for Family Members

(G.S. 18B-201(c))



Family member includes anyone related by blood or marriage to degree of first cousin or closer (includes step's and in-laws)

Dealing for Family Members

(G.S. 18B-201(c))



Financial benefit includes any direct or indirect financial benefit from the transaction

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Dealing for Family Members

(G.S. 18B-201(c))



Local Board CANNOT enter into contract or otherwise deal in any business transaction unless specific statutory requirements for curing the conflict are met

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Curing the Conflict

- Member abstains from participating and voting
- Meeting minutes and annual audit note conflicted member and transaction amount
- ABC Commission notified at least 2 weeks in advance of final board approval



❖ **Additional restrictions apply to contracts under which you or your spouse receive a direct benefit**


(G.S. 14-234)


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Self-Benefiting in Public Contracting

(G.S. 14-234(a)(1); G.S. 18B-201(b))








If you're involved at any point in the contracting process, you're involved in "making or administering" the contract



Self-Benefiting in Public Contracting


(G.S. 14-234(a)(1); G.S. 18B-201(b))






There's a **direct benefit** if you or your spouse:


1. Own more than 10% of the company,
2. Receive income or commission from the contract, or
3. Acquire property under the contract




Self-Benefiting in Public Contracting

(G.S. 14-234(a)(1); G.S. 18B-201(b))



***Unless an exception applies:** banks and utilities, friendly condemnation, spouse employment, public assistance programs, small jurisdictions



Attempting to Influence Contracting

(G.S. 14-234(a)(2))

Direct benefit to you or your spouse

+

Attempt to influence

+

Someone involved in making or administering

=

Class 1 misdemeanor



Doesn't have to be a contract you make or administer!

No exceptions!




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Using Position for Financial Benefit

(G.S. 18B-201(f))

You, your family, or business with which associated



Family member includes anyone related by blood or marriage to degree of first cousin or closer (includes step's and in-laws)




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Using Position for Financial Benefit

(G.S. 18B-201(f))

You, your family, or business with which associated



Business with which associated is one with which you or your immediate family is an employee; a director, officer, or partner; a lobbyist; or owns the lesser of \$10K or 5% interest



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Using Position for Financial Benefit

(G.S. 18B-201(f))



Financial benefit means a direct pecuniary gain or loss to you, your family, or a business with which associated, or a direct pecuniary loss to a business competitor

Using Position for Financial Benefit

(G.S. 18B-201(f))



CANNOT use your position as an ABC board member in any way unless a specific statutory exception applies





Using Position for Financial Benefit

EXCEPTIONS:

1. Benefit is for entire profession, occupation, or general class and member benefits no more than others
2. Benefit is the same for all citizens of the state
3. Remote, tenuous, insignificant, or speculative
4. Board member compensation
5. Written advisory opinion from ABC Commission authorizing participation
6. Ministerial action not involving discretion
7. Counted only for purposes of quorum

Navigating Through Conflicts

What Is Your Interest?

- ? Do you or a family member have a financial interest in an ABC business?  *Cannot be employed by or serve on ABC Board*
- ? Does a board matter involve:
- A direct or indirect financial benefit to you or a family member?  *Must cure conflict*
 - A contract under which you or your spouse receive a direct benefit?  *Cannot enter into contract*
- ? Will using your position result in a financial benefit to you, your family, or a business with which you are associated?  *Cannot use position unless exception applies*

Check Your Understanding



Now is your opportunity to practice what you have learned. On the next slide, you will be presented with two questions.

When you are ready to begin the quiz, select the continue button on your slide.

Continue

A board member's spouse owns an architecture firm. May the board contract with the firm to draw plans for a new ABC store if the spouse is not directly involved in the project?

- ☐ A) Yes
☐ B) No

Submit

Clear


May a General Manager's son work as a distiller representative if the son does not do any business directly with the General Manager's stores?

- ☐ A) Yes
- ☐ B) No

[Submit](#) [Clear](#)

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Quiz Completed




You may review the quiz questions and your answers or select **Continue** to move on.

[Continue](#) [Review Quiz](#)

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GIFTS & FAVORS



Gifts and Favors



What is a Gift?



"Something voluntarily given by one person to another without compensation."

-Webster's Dictionary

ABC Commission Policy on Gifts

- **ZERO** Tolerance – **NO** Gifts!
- Applies to all board members and employees
- Prohibits accepting gift from anyone who is:
 1. **Under contract** with the local board
 2. **Doing business** with the local board
 3. Has a **financial interest** in the operations of the local board



Gifts and Favors from Contractors

(G.S. 133-32)



Prohibited Giver:

Contractor or vendor who is:

1. Past (within 1 year)
2. Current
3. Potential future



= Class 1 misdemeanor, unless an exception applies

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Gifts and Favors from Contractors

(G.S. 133-32)



Prohibited Recipient:

Public officer or employer who:

1. Prepares plans or specifications for public contracts, or
2. Awards or administers public contracts, or
3. Inspects or supervises construction



= Class 1 misdemeanor, unless an exception applies

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Gifts and Favors from Contractors

(G.S. 133-32)

Exceptions:

- Honoraria
- Souvenirs & advertising items of minimal value
- Meals & banquets
- Gifts to professional organizations
- Gifts from family and friends

ABC Commission's
"ZERO Tolerance" Gift
Ban still applies!



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Gifts for Influencing Contracts

(G.S. 14-234(a)(3))

Solicit or receive a gift or favor + Attempt to influence + Someone involved in making or administering = Class 1 misdemeanor

Doesn't have to be a contract you or your spouse benefit from!

No exceptions!

UNC School of Government

Gift Ban Rule of Thumb

When In Doubt, Do Without!

UNC School of Government

Check Your Understanding

Now is your opportunity to practice what you have learned. On the next slide, you will be presented with two questions.

When you are ready to begin the quiz, select the continue button on your slide.


[Continue](#)

UNC School of Government

Is a distiller legally permitted to take the members of board to dinner to introduce them to a new product?

☐ A) Yes
☐ B) No

Submit Clear




Is a store clerk legally permitted to accept free shot glasses from a distiller's representative?

☐ A) Yes
☐ B) No

Submit Clear




Quiz Completed



You may review the quiz questions and your answers or select **Continue** to move on.

Continue Review Quiz



INSIDER TRADING



Misusing Confidential Information



Improper Use or Disclosure

(G.S. 18B-201(j))

Board Member cannot:

- Improperly disclose
 - Improperly use
- Any** confidential information



Pecuniary Gain

Misuse of Confidential Information (G.S. 14-234.1)


Use non-public
information
gained in official
position

+

Pecuniary
benefit to you or
someone else


=

Class 1
misdemeanor



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Check Your Understanding



Now is your opportunity to practice what you have learned. On the next slide, you will be presented with a question.

When you are ready to begin the quiz, select the continue button on your slide.

Continue


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A board is considering several sites for the location of a new ABC store that have not been publically disclosed. May a board member tell his neighbor (who happens to be a realtor) about the potential sites?

- ☐ A) Yes
- ☐ B) No

Submit

Clear



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Quiz Completed



You may review the quiz question and your answer or select **Continue** to move on.

[Continue](#) [Review Quiz](#)

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NEPOTISM



Supervision of Family Members

(G.S. 18B-700(k))

Board Members and Employees **CANNOT**:

- Supervise immediate family members
- Occupy a position with influence over immediate family members'
 - Employment
 - Promotion
 - Salary administration
 - Management
 - Other personnel matters



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Supervision of Family Members

(G.S. 18B-700(k))

Immediate Family Member:

- Spouse
- Parents
- Siblings
- Children
- Grandparents
- Grandchildren
- Step-, half-, in-laws
- Others living in household as if family



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Check Your Understanding



Now is your opportunity to practice what you have learned. On the next slide, you will be presented with three questions.

When you are ready to begin the quiz, select the continue button on your slide.

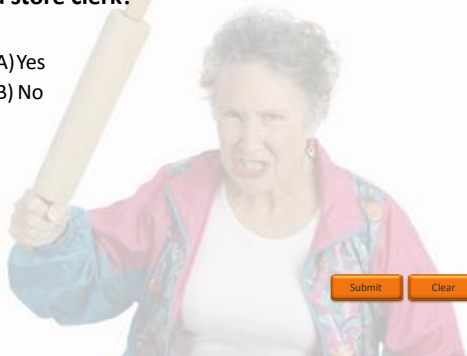
Continue

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May a General Manager hire his mother-in-law as a store clerk?

- ☐ A) Yes
- ☐ B) No

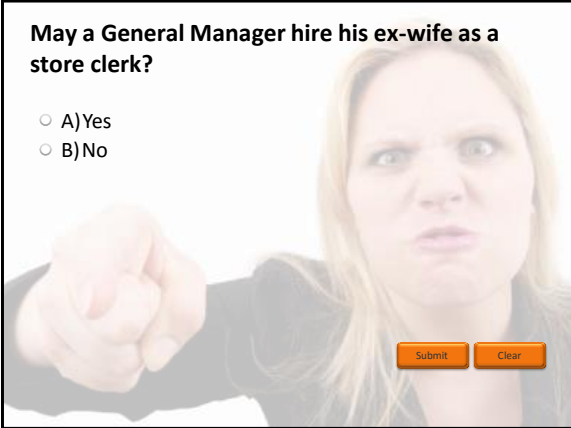


Submit

Clear

May a General Manager hire his ex-wife as a store clerk?


- ☐ A) Yes
- ☐ B) No



[Submit](#) [Clear](#)


May a husband and wife both serve on the same ABC board?

- ☐ A) Yes
- ☐ B) No



[Submit](#) [Clear](#)

Quiz Completed



You may review the quiz questions and your answers or select **Continue** to move on.

[Continue](#) [Review Quiz](#)

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Is Every Relationship Nepotism?



Be Open, Transparent, and Objective
in **All** Personnel Matters

TRANSPARENCY OPEN MEETINGS



The Basics: Open Meetings

Official meetings of public bodies must be noticed and open to the public unless the subject falls within an exception allowing a closed session meeting



Official Meetings of Public Bodies

- Public Body
 - Government created body with two or more members
 - Carries out government functions, including administrative, advisory, judicial, legislative
- Official Meeting
 - Majority of public body gathers together simultaneously
 - In person, or electronically
 - To do public business

Exceptions

Social Gatherings



Must avoid
talking shop!

Staff Meetings



Only staff involved

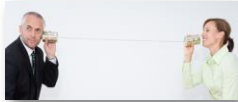
Electronic Meetings

Majority of a public body interacting in an electronic conversation that is essentially simultaneous may constitute a meeting



Caution: Small Public Bodies

- Two members of a three member board or committee calling or emailing can constitute an official meeting
- A committee of a public body is itself a separate public body
 - A five member board creates a three person committee, and two members meet for coffee to talk about a committee issue – that's an official meeting of the committee



Notice Requirements

1. **Regular meetings:** file notice of regular meetings with the clerk and post them on agency website
2. **Special meetings:** 48 hour notice by mail, e-mail, or delivery to "sunshine list" and post on agency website
3. **Emergency meetings:** notice to news media who have requested it, in same manner as given to members of the public body
4. **Recessed meetings:** post on website

Limited Authority to Meet in Closed Session

Process:

1. Motion must be made in **open** session
2. Purpose **must be specifically authorized by** statute
3. Motion **must identify the specific authorized purpose** of the closed session (may cite to the statute or provide a description that identifies the applicable provision)



Closed Session Purposes*

- Preserve confidentiality of records
- Preserve attorney client privilege
- Discuss bargaining position for property acquisition
- Matters involving alleged criminal misconduct
- Consider performance, qualifications, appointment, of public employees and public officers (not members of the board itself or other boards)

*Partial list: See G.S. 143-318.11 for complete description

Check Your Understanding



Now is your opportunity to practice what you have learned. On the next slide, you will be presented with three questions.

When you are ready to begin the quiz, select the continue button on your slide.

Continue

Your board is planning to hire a new general manager and wants to discuss the job requirements and how they plan to conduct the search. Can you have this discussion in closed session?

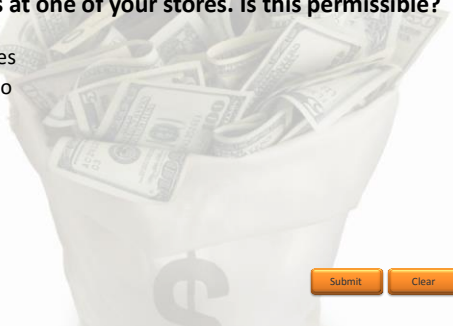
- A) Yes
- B) No

Submit

Clear

Your board wants to meet to in closed session to discuss an ongoing investigation of missing funds at one of your stores. Is this permissible?

- ☐ A) Yes
- ☐ B) No



Submit Clear

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The board is unhappy with the uncooperative attitude of the chair and proposes to meet in closed session to discuss it. Is this permissible?


- ☐ A) Yes
- ☐ B) No



Submit Clear

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Quiz Completed



You may review the quiz questions and your answers or select **Continue** to move on.

Continue Review Quiz

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Minutes of Official Meetings

- Public bodies must create and retain minutes of meetings and general accounts of closed sessions
- Minutes of closed sessions may be withheld as long as necessary to avoid frustrating the purpose of the session



TRANSPARENCY PUBLIC RECORDS




The Basics: Public Records

Any record made or received in the transaction of public business is subject to public access unless an exception applies




Test Your Knowledge



Let's see what you know about the public records law. On the next slide, you will be presented with two questions.

When you are ready to begin the quiz, select the continue button on your slide.

Continue




A citizen wants copies of financial statements and manager's reports for the previous two years? Must the board provide them?

☐ A) Yes

☐ B) No

Submit

Clear




A citizen asks for copies for all emails of board members relating to board business. Must the board members provide access to emails relating to board business that are on members' private computers and mobile devices or emails on private email accounts.

☐ A) Yes

☐ B) No

Submit

Clear



Quiz Completed



You may review the quiz questions and your answers or select **Continue** to move on.

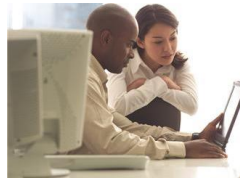
[Continue](#) [Review Quiz](#)

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What's a Public Record?

Content
of the
record



Not **location** of
the record

Determines whether it is a public record

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The Public Agency's Obligation

Provide records

- to anyone who requests them
- "as promptly as possible"
- in the medium requested if possible
- charge only direct costs

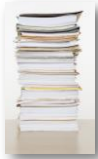


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Cost of Producing Public Records

Actual, direct costs only



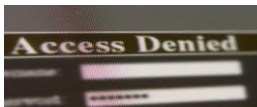
Not personnel time



Exceptions: Two Kinds

An exception may provide that records:

1. **Need not** be provided, but you **may** do so
Examples: Economic development information
2. **Shall not** be provided, and you **may not** do so
Examples: Social security numbers, trade secrets, personnel information



Public Employee Records

Public Records Act

Most records of public agencies are public



Exception: Personnel Privacy Statutes

Most public employee records are not public



Exception to the exception: Personnel Privacy Statutes

Specific employee information is public

Employee Information That is Public

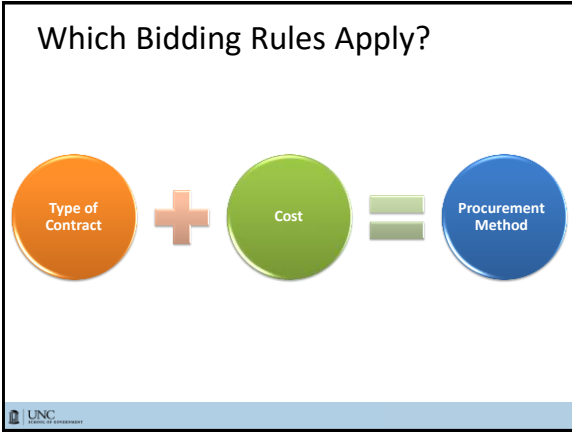
- Name
- Age
- Date of hire
- Terms of Contract
- Current salary
- Date and amount of each increase and decrease (salary history)
- Date and type of each personnel action
- Date and general description of reasons for promotion
- Copy of notice of final dismissal for disciplinary reasons, setting forth basis for dismissal

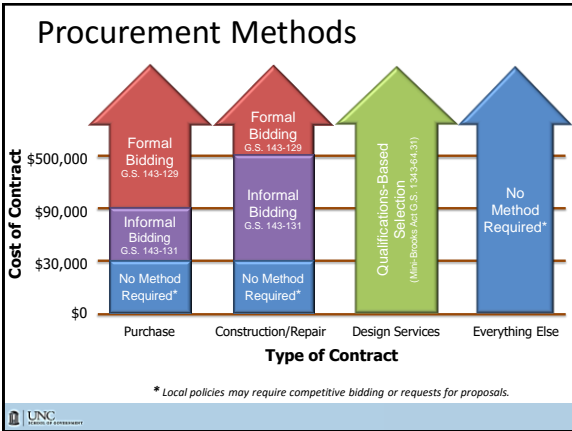
Records Retention

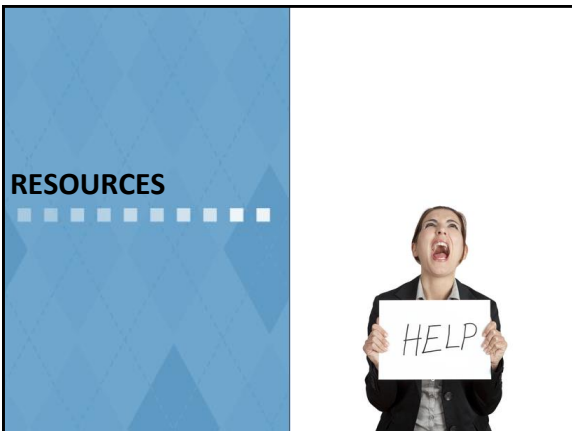
- [Records retention schedules](#) dictate what must be kept, and for how long and provide legal authority to destroy
- Records of “short term value” need not be retained
 - Personal messages (including electronic mail) not related to official business
 - Records that do not contain information necessary to conduct official business, meet statutory obligations, carry out administrative functions, or meet organizational objectives

BIDDING REQUIREMENTS









Ethics



Click anywhere
on website image
to go to site

- *Coates' Canons NC Local Government Law Blog* canons.sog.unc.edu
- *Ethics and Conflicts of Interest (Chapter 7)* in *County and Municipal Government in North Carolina, 2nd ed.*
- *Model Code of Ethics for NC Elected Officials* (Appendix 11.4 of ABC Operations Manual)
- *Rules of Procedure for Small Local Govt. Boards*

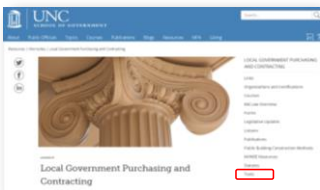
Open Meetings and Public Records



Click anywhere
on website image
to go to site

- *Open Meetings Webinar Series* and *Public Records Webinar Series*
- *Open Meetings (Chapter 9)* and *Public Records (Chapter 8)* in *County and Municipal Government in North Carolina, 2nd ed.*
- *Coates' Canons NC Local Government Law Blog* ("*Open Government*" topic)
- Other publications and resources listed on the *Open Meetings* website

Purchasing and Contracting



www.ncpurchasing.unc.edu

Click anywhere
on website image
to go to site

- *Bidding Dollar Thresholds 2015* (Appendix 11.7 of ABC Operations Manual)
- *Public Contracts, Competitive Bidding, and Property Disposal (Chapter 23)* in *County and Municipal Government in North Carolina, 2nd ed.*
- *North Carolina Local Government Contracting: Quick Reference and Related Statutes*

Questions?



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Congratulations!



Please complete our [evaluation](#)
Download the [Ethics Verification form](#) or [CLE form](#)