

ETHICS, PUBLIC RECORDS AND SUNSHINE LAW FOR CLERKS

Keeping Your Name Out of The
Paper

WHO WE ARE

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RULES FOR TODAY

- Have fun
- Ask questions as we go
- Be prepared to talk
- It's no risk – you're among friends; we're just trying to learn
- This is not a comprehensive review – we are not covering every aspect of these areas
- PowerPoint will be available after the presentation

ETHICS

Multiple codes may apply:

- Florida Constitution
- Chapter 112, F.S.
- Local ethics code or personnel rules (County/Clerk's Office)
- The Rules Regulating The Florida Bar



ETHICS

Things you always need to remember:

- If in doubt, do not do it
- What will it look like on the front page of the newspaper?
- What would your Mom say?

ETHICS

The Florida Code of Ethics prohibits:

- Soliciting/accepting gifts
- Accepting unauthorized compensation
- Misusing your public position
- Disclosing/using certain information not available to the public
- Doing business with own agency
- Engaging in conflicting employment or contractual relationships
- Public Administrators held to a higher standard. Sec. 112.311(6), F.S.

HYPOTHETICAL - ETHICS

- Discuss at your table for 10 minutes
- Make decision on what you would advise

HYPOTHETICAL - ETHICS

The Clerk starts dating an attorney who regularly practices law in the same county. The Clerk, working with staff, ensures that he is completely screened off from any interaction with the Attorney at work including blocking him from access to any of the Attorney's cases on the CMS. The Attorney, if she needs to visit the Clerk's office, sends an associate from the law firm.

When they go out on dates or to social events the Attorney often pays. They recently both attended The Florida Bar Convention - traveling separately - but they stayed in the same room paid for by the Attorney's firm. To celebrate the Clerk's birthday, the Attorney planned a surprise party and invited all of their friends and coworkers. The two also took a two-week trip to Europe and the Attorney again paid all the expenses.

- What are some ethical problems, if any? What would you advise the Clerk? If there is a violation, how can the Clerk "cure" it?

HYPOTHETICAL – ETHICS - ANSWER

Analysis (CEO 16-1, January 27, 2016)

- Is paying for food, drink, social activities, a party and travel a gift? - yes
- Is Clerk a “reporting individual” – yes
- Is Attorney someone who cannot provide gifts to a “reporting individual?” (i.e., is the Attorney a prohibited donor?) - ?

ETHICS - GIFTS

What is a gift?

- If you didn't pay for it...it may be a gift
- Anything you get, for which you do not give equal or greater consideration within 90 days

ETHICS - GIFTS

- Sec. 112.313(2) prohibits officials from soliciting or accepting anything of value to the recipient based upon any understanding that the official's action would be influenced.
- Sec. 112.313(4) prohibits the official or his or her spouse or minor child from accepting anything of value when the official knows, or with the exercise of reasonable care should know, that it was given to influence the official.

GIFTS - REPORTING

Each person required to file FORM 1 or FORM 6, and each state procurement employee, must file a **FORM 9, Quarterly Gift Disclosure**, with the Commission on Ethics disclosing any gift worth **more than \$100**

GIFTS - REPORTING

Information to be disclosed includes a description of the gift and its value, the name and address of the donor, the date of the gift, and a copy of any receipt for the gift provided by the donor. [Sec. 112.3148, F.S.]

GIFTS YOU CAN RECEIVE

- Gifts from relatives
- Gifts on behalf of a governmental entity or charitable organization
- Gift from persons who are not lobbyists/principles/vendors, but you must report any valued over \$100
- Gift from governmental organizations, but you must report any valued over \$100

GIFTS –POLITICAL COMMITTEES

No gifts at all from political committees

“Political committee” means: A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:

- a. Accepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;
- b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
- c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
- d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.

HYPOTHETICAL

What if the Attorney's law firm represents Tyler Technologies?

ETHICS –UNAUTHORIZED COMPENSATION

Unauthorized Compensation

- Public officers/employees, local government attorneys, and their spouses and minor children are prohibited from accepting any compensation, payment, or thing of value when they know, or with the exercise of reasonable care should know, that it is **given to influence a vote or other official action**. [Sec. 112.313(4), F.S.]



HYPOTHETICAL

What if the Clerk is hired by the National Center for State Courts to evaluate Clerk's offices in other states?

What if the Clerk teaches Accounting at a public university?

ETHICS – DUAL EMPLOYMENT

Dual Public Employment

- Candidates and elected officers are prohibited from accepting public employment if they know or should know it is being offered for the purpose of influence.
- Further, public employment may not be accepted unless the position was already in existence or was created without the anticipation of the official's interest, was publicly advertised, and the officer had to meet the same qualifications and go through the same hiring process as other applicants.
- For elected public officers already holding public employment, no promotion given for the purpose of influence may be accepted, nor may promotions that are inconsistent with those given other similarly situated employees. [Sec. 112.3125, F.S.]

ETHICS –DISCLOSURE OF INFORMATION

Disclosure or Use of Certain Information

- Public officers and employees and local government attorneys are prohibited from disclosing or using information not available to the public and obtained by reason of their public position for the personal benefit of themselves or others. [Sec. 112.313(8), Fla. Stat.]



HYPOTHETICAL

What if the Clerk and the Attorney
were to get married?

ETHICS - NEPOTISM

Anti-Nepotism Law

- A public official is prohibited from seeking for a relative any appointment, employment, promotion or advancement in the agency in which he or she is serving or over which the official exercises jurisdiction or control. No person may be appointed, employed, promoted, or advanced in or to a position in an agency if such action has been advocated by a related public official who is serving in or exercising jurisdiction or control over the agency; this includes relatives of members of collegial government bodies.



ETHICS – POST EMPLOYMENT

Where can you not work?

ETHICS – POST EMPLOYMENT

Post-Employment Restrictions

- Local elected officials may not personally represent another person/entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. [Sec. 112.3131(14), F.S.]

ETHICS –FUTURE EMPLOYMENT

Additional Restrictions on Former State Employees

- A former executive or judicial branch employee or PSC employee is prohibited from having employment or a contractual relationship, at any time after retirement or termination of employment, with any business entity (other than a public agency) in connection with a contract in which the employee participated personally and substantially by recommendation or decision while a public employee. [Sec. 112.3185(3), Fla. Stat.]

ETHICS

Process for obtaining advisory opinions rendered by the Commission on Ethics

- Informal opinion
- Formal opinion
- You can withdraw request
- http://www.ethics.state.fl.us/Support/FAQs.aspx#request_opinion

PUBLIC RECORDS

The Basics

- Florida law creates a right of access to public records
- What is a public record?
 - Anything made or received in the course of business that perpetuates, communicates or formalizes knowledge

PUBLIC RECORDS

Who can request public records?

- Anyone.
- Requestor does not have to identify themselves or purpose of request.
- Can't refuse request because it is overbroad
- Can't refuse because someone else has the file

How do you request public records?

- With one exception requests can be made in writing or orally
- Can require it to be in writing if "Court Records"

PUBLIC RECORDS

- Article I, Section 24, Florida Constitution
- Chapter 119, Florida Statutes
- Rule 2.420, Rules of Judicial Administration
 - Difference Between Administrative records & Court records

PUBLIC RECORDS

Recent Updates

- Section 119.0714, F.S. (HB 441)
 - Clerk's liability
- 2016 updates to Chapter 119, F.S.

PUBLIC RECORDS

New exemptions

HB 111 - Identity of Witness to a Murder (Sec. 119.071(2)(m), F.S.)

- Exemption for criminal intelligence/investigative information that reveals the personal identifying information of a witness to a murder for 2 years after the date of the murder.

SB 886 – Substance Abuse Impaired Persons (Sec. 397.6760, F.S.)

- Makes all petitions for involuntary assessment and stabilization, court orders, and related records that are filed with or by a court under the Marchman Act confidential and exempt.

PUBLIC RECORDS

When the legislature creates a new public records exemption and that exemption exists in a court file, when does the exemption apply to the court file?

- In re Amendments to Florida Rule of Judicial Administration 2.420, 68 So.3d 228 (Fla. 2011) (PSI)
- In re Amendments to Florida Rule of Judicial Administration 2.420, 124 So.3d 819 (Fla. 2013) (test)

DO'S & DON'TS - PUBLIC RECORDS

DO'S	DON'TS
Promptly acknowledge request	Do not panic
Provide access within a reasonable time	No need to create a new record
Maintain communication with requestor	No need to answer questions about the records themselves
Document everything	Do not accept "standing" requests

VIOLATIONS - PUBLIC RECORDS

- Possible civil action, including liability for requestor's costs and attorneys' fees
- There is new statute on when fees can be assessed
- Knowingly violating Ch. 119 can subject you to suspension and removal or impeachment.
- Willful, knowing violation is a 1st degree misdemeanor

SUNSHINE LAW – OPEN MEETINGS

The Basics

- Sunshine Law provides a right of access to all governmental meetings – except the judiciary
- Applies to communications between two or more members about any matter the board/committee/council may consider

APPLICABILITY - SUNSHINE LAW

The Sunshine Law applies to Clerks/staff:

When serving on a collegial body (board/committee/council)

- Examples include: Florida Courts E-Filing Authority, Florida Local Government Investment Trust (Florida Trust), Investment Advisory Committee

When serving on a selection committee

- For competitively procured goods and/or services
- For selecting a candidate to fill a vacant position

SUNSHINE LAW – OPEN MEETINGS

Be careful not to inadvertently act as a liaison/intermediary/conduit between members of a collegial body

- AGO 74-47 – City Manager may not act as a liaison for board members by circulating information and thoughts of individual members

COMPLIANCE - SUNSHINE LAW

Compliance requires:

- Reasonable notice of the meeting
- Open and available to the public
- Written minutes must be taken

VIOLATIONS - SUNSHINE LAW

Violations could result in:

- Nullification of the decision/action/vote of the governing body
- Removal from the position subject to law
- Second degree misdemeanor

SOURCES OF INFORMATION

- Commission on Ethics
 - publishes ethics opinions and annual reports on its website
 - provides free training online - www.ethics.state.fl.us
 - provides links to more in depth training online – there is a fee
 - provides a **Guide to the Sunshine Amendment and Code of Ethics**
www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=201768
- Government-In-The Sunshine Manual - yearly edition – can order online – www.Floridafaf.org (covers Sunshine Law and Public Records)



QUESTIONS?