

Florida's Code of Ethics and its Commission on Ethics

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Presented by

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History of Florida's Ethics Laws

- Relatively recent emphasis
- Post-Watergate
- Governor Askew—Sunshine Amendment
- Commission on Ethics
- Part III, Chapter 112, Florida Statutes

Florida Commission on Ethics

- Nine members (appointed)
- Meets approximately every six weeks
- Administers Article II, Section 8, Florida Constitution, and Part III, Chapter 112, Florida Statutes
- Handles ethics complaints, issues advisory opinions, and administers financial disclosure laws

Persons governed by the ethics laws

- Public officers
- Public employees
- Local government attorneys
- Not Federal employees and officers
- Not Article V Florida judges and justices
- Not most independent contractors

Types of ethics laws/standards

- Financial disclosure requirements
- Gift bans
- Gift disclosures
- Expenditure bans
- Voting/participation conflicts
- Anti-nepotism
- Various “flat out” Prohibitions
- Agency/locality additional standards

Anti-nepotism

- FS 112.3135
- Bans certain hiring
- Bans certain advocacy
- Does not prohibit two relatives from merely working together
- Has exemptions for public school districts, community colleges, and state universities
- Does not apply to a paramour

Doing business with one's public agency prohibition

- FS 112.313(3)
- Restricts rentals, leases, or sales between one's (or one's spouse's or child's) business and one's public agency or political subdivision
- Has exemptions, including exemptions listed in FS 112.313(12)

Conflicting employment and contractual relationships

- FS 112.313(7)
- Mirrors, but is broader than, FS 112.313(3)
- Exemptions in FS 112.313(12)
- Additional exemption in FS 112.313(15)
- Can be negated by FS 112.316, like FS 112.313(3) can be negated by FS 112.316

Employees holding office

- FS 112.313(10)
- Different than Florida Constitution dual office-holding
- Example of violation is county commissioner employed by same county's road department
- Example of situation that is not a violation is county commissioner employed by Florida FDOT

State licensing board members

- FS 112.313(11)
- For example, cannot be on Florida Board of Dentistry and simultaneously be an officer of the Florida Dental Association
- CEO 83-78

FS 112.313(17)

- Restricts members of Board of Governors of State University System and trustees of universities from serving as Legislative lobbyists

Misuse of public position

- FS 112.313(6)
- Most complaints
- Most difficult to prosecute
- Encompasses bad/evil conduct
- Not triggered by policy decisions alone
- Requires “corruption”

Use of inside information

- FS 112.313(8)
- Usually redundant to FS 112.313(6)
- Can encompass ultimately public information

Solicitation/acceptance of certain gifts

- FS 112.313(2)
- Amounts to bribery
- Requires quid-pro-quo
- A rare occurrence and even rarer to prove

Unauthorized compensation/gifts

- FS 112.313(4)
- Is based on actual or constructive knowledge
- A more useful tool than FS 112.313(2)
- Somewhat displaced by FS 112.3148 and FS 112.3215

Gift prohibitions and disclosures for R.I.P.E.s

- FS 112.3148
- Applies to reporting individuals and procurement employees at the state and local level
- Prohibits gifts from “lobbyists” and their cohorts valued at more than \$100
- Requires reporting of certain gifts
- Prohibits solicitation of any lobbyist gift
- Somewhat superseded by FS 112.3215 regarding state level employees and officers

Honoraria and honorarium event-related expenses

- FS 112.3149
- Interplays with FS 112.3149
- Superseded by FS 112.3215 for state-level personnel

Lobbying and expenditures (state level--executive branch)

- FS 112.3215
- Expenditures (gifts) severely restricted by December 2005 special session amendments to law
- Applies to Reporting Individuals (RIs) but not to Procurement Employees (PEs)
- Augments, but did not repeal gifts law codified at FS 112.3148

Local government attorneys

- FS 112.313(16)
- Do not exist at state level
- Two types: employee and independent contractors
- Subject to some or all of Code of Ethics
- Written contract provision required to funnel extra business to one's law firm
- Cannot represent client before government client's unit of government

Revolving door/post-office-holding restrictions

- FS 112.313(9)—state level
- FS 112.313(14)—local government level
- Lasts for two years after leaving public position
- At state level, prohibits “representation” before all of one’s former “agency”
- At state level, applies to SMS, SES, and certain others
- Requires personal representation for compensation—is not vicarious to other members of one’s private firm
- Subject to limited grandfathering

Additional restrictions—state level

- FS 112.3185
- Do not require SMS/SES or similar status
- Contains restrictions applicable while publicly employed and after leaving public service
- Post-public-employment restrictions are complicated to apply to a given situation
- Is not a blanket post-public-employment ban

Voting conflicts law

- FS 112.3143
- Applies at state and local levels
- Applies to members of government collegial bodies, including advisory bodies
- Requires disclosure via CE Form 8A at state level
- Requires oral declaration, abstention from voting, and written disclosure via CE Form 8B at local level
- Triggered by “special private gain or loss” to the member personally or to certain others

Financial disclosure (CE Form 6)

- Filed by Constitutional officers and certain others
- Called “full” disclosure
- Requires lots of detail
- Is a goldmine for the press
- Not filed by many state employees or local government employees

Financial Disclosure (CE Form 1)

- Called “limited disclosure”
- Is the form most often filed by public employees who file financial disclosure
- Has percentage threshold versus dollar amount choices/options
- Due within 30 days of hiring
- Due on or before each July 1 thereafter
- CE Form 1F is due within 60 days of leaving one’s public position

Disclosure of specified business interests

- FS 112.3145(5)
- Required of Form 6 and Form 1 filers
- Concerns disclosure of “businesses granted a privilege to operate in this state”
- Forms 6 and 1 contain a finite list of such businesses

Client disclosure (quarterly)

- FS 112.3145(4)
- Applies to Form 6 and Form 1 filers
- CE Form 2
- Applies to a public officer/employee and to members of his or her private firm
- Has certain exceptions

More stringent ethics standards

- Are not preempted by the Code of Ethics or the Commission on Ethics—FS 112.326
- May be problematic
- May be subject to vested rights, union contract rights, or other restrictions
- May be good in particular, limited situations
- Do not waive “floor” of state ethics laws
- Should be based in reason and logic

Thank you!

- Keep up your good and very necessary work.