

St. Johns County
Office of the County Attorney
2014 Ethics Seminar



**Misuse of Office, Use of Inside
Information and Nepotism**

presented by

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Perspective

- Out of a sample of 85 complaints filed last year, 71 alleged misuse of office/information or nepotism
- Nepotism is the most misunderstood provision
- Misuse of office is the most common allegation



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Misuse of Public Position

(§ 112.313(6), F.S.)

No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.



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Bad Behavior

Misuse is NOT merely:

- Using poor judgment;
- Being dishonest, incompetent or negligent;
- Wasting resources; or
- Engaging in rude or unprofessional behavior



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Key Words

- Corruptly use or attempt to use
- Public position or resources
- To secure a special benefit or privilege
- For oneself or others



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Corruptly means...

- Engaging in conduct that is inconsistent with proper performance of duties;
- Knowing that the conduct is wrong; AND
- Intending to gain a personal privilege, benefit or exemption

See Blackburn v. State Commission on Ethics, 589 So. 2d 431 (Fla. 1st DCA 1991)



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Examples

- Port Authority employees were fined for using office equipment to make BBQ grills and repairs to friends' cars.
- A State employee was fined for selling a state manual to a town in the Midwest after “borrowing” the contents and deleting references to Florida Statutes.



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Inside Information

(§ 112.313(8), F.S.)

Disclosure or Use of Certain Information.— A current or former public officer, employee of an agency or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.



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Key words...

- The provision applies to both *current* and *former* officers and employees
- Personal gain or benefit
- Information not available to the public



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Exemptions

- Information relating exclusively to governmental practices
- Use of general expertise or skill



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Helpful tips for avoiding complaints

- Keep business endeavors separate from public responsibilities
- Never assert a public position for a special benefit
- When in doubt, seek guidance from the Florida Commission on Ethics



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Nepotism

Restriction on Employment of Relatives

(§ 112.3135(2)(a), F.S.)

A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official.



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Key Words

A public official may not:

- appoint, employ, promote or advance a relative
- recommend a relative for appointment, employment, promotion or advancement



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Meet the Relatives

Father, Mother

Brother, Sister

Son, Daughter

Aunt, Uncle, 1st Cousin

Half Brother, Half Sister

Stepson, Stepdaughter

Father-in-law, Mother-in-law

Brother-in-law, Sister-in-law

Nephew, Niece

Stepfather, Stepmother

Stepsister, Stepbrother



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Non-Relatives

- A man who is your mother's sister's husband (your aunt's husband) is not your relative for purposes of § 112.3135(2)(a), F.S.
See CEO 99-5.
- “Relatives” do not include “significant others” or paramours.
See CEO 02-3.



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Interesting Notes

- The provision does not prohibit relatives from working in the same office.
- The provision does not prohibit relatives from supervising one another (although that not might not be a good idea for countless reasons)
- The Commission has *grandfathered* certain nepotism situations.



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Exemptions

- District school boards (*but see* §1012.23, F.S.-a board member cannot supervise a relative)
- Community college districts
- Individuals serving in a volunteer capacity, providing emergency medical, fire or police services
- Appointments to boards other than land planning or zoning agencies, in municipalities with populations of less than 35,000
- Legislators' relatives who serve as messengers during session



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Examples

- CEO 13-7
- CEO 13-1
- CEO 09-15



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Important Note

If you serve on a collegial body, your relative *cannot be hired or appointed* to a position or board, *even if you abstain from the vote.*



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