

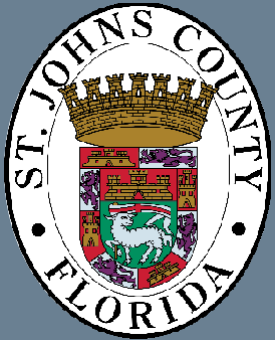
# 2022 Ethics Seminar

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

Prepared by:

St. Johns County Office of the County Attorney



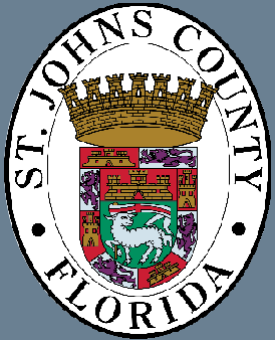


The information contained in this this presentation was provided by Betsy Daley, former Senior Attorney, Florida Commission of Ethics, and Kerri J. Stillman, Director of Operations and Communications, Florida Commission on Ethics.

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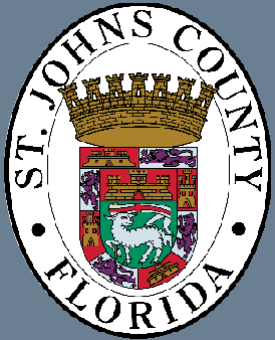
# PERSPECTIVE

- Nepotism is the most misunderstood provision.
- Misuse of office is one of the most common allegations.



# MISUSE OF PUBLIC POSITION

## (§ 112.313(6), F.S.)

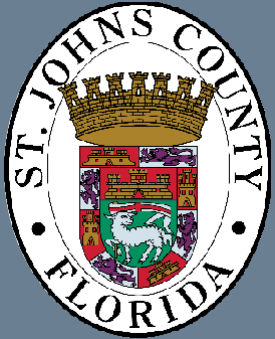


“No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for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

# BAD BEHAVIOR

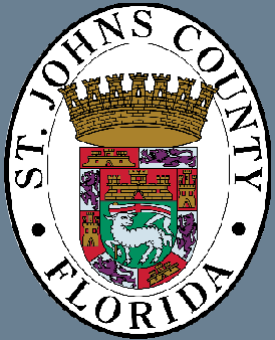
Misuse is NOT merely:

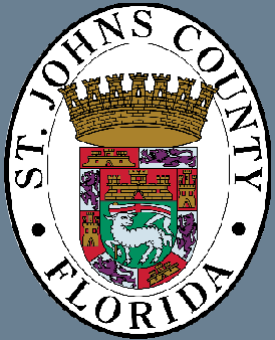
- Using poor judgment;
- Being dishonest, incompetent, or negligent;
- Wasting resources; or
- Engaging in rude or unprofessional behavior.



# KEY WORDS

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





## “Corruptly” means:

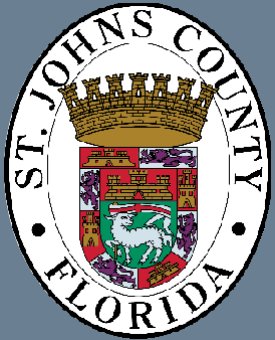
“[D]one with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her duties.”

§ 112.312(9), F.S.

Conduct must be done with knowledge or notice that it is wrong.

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

# EXAMPLES

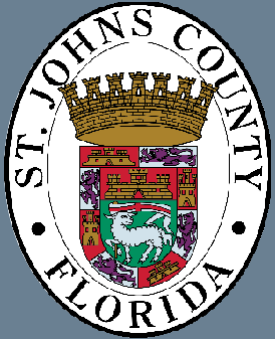


- Port Authority employees were fined for using office equipment to make BBQ grills and repairs to friends' cars.
- A state employee was fined for selling a state manual to a town in the Midwest after “borrowing” the contents and deleting references to Florida Statutes.
- City commissioner was sanctioned for using city stationery to promote symposium for which he received compensation.
- Contract city attorney was sanctioned for creating two positions and convincing city council to appoint him at the end of his contract.

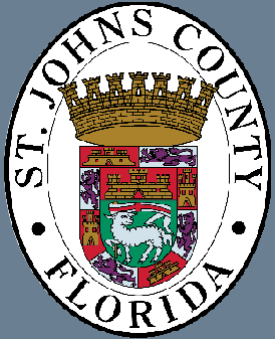


# AMENDMENT XII - Art. II, § 8

*(effective December 31, 2020)*



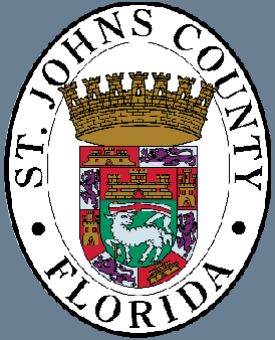
“A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.”



## “Disproportionate Benefit” means:

“[A] benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.”

Rule 34-18.001, Fla. Adm. Code



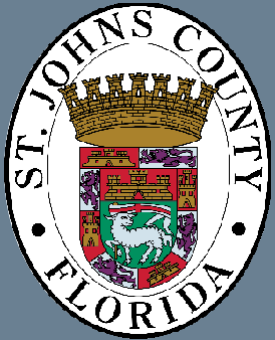
# INSIDE INFORMATION

(§ 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.”

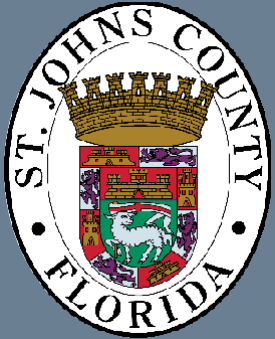
# KEY WORDS

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



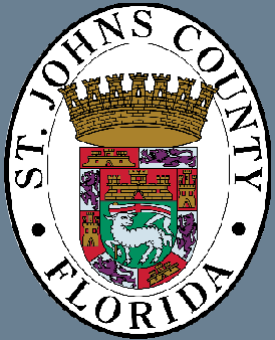
# EXEMPTIONS

- Information relating exclusively to governmental practices
- Use of general expertise or skill
- **BUT DOES** include knowledge or expertise on a particular project or matter



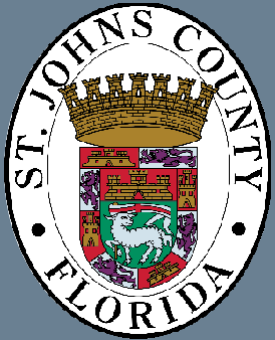
# Helpful Tips for Avoiding Complaints

- 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



# NEPOTISM

Restriction on Employment of Relatives  
(§ 112.3135(2)(a), F.S.)

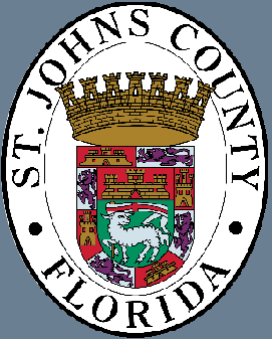


“A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the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

# KEY WORDS

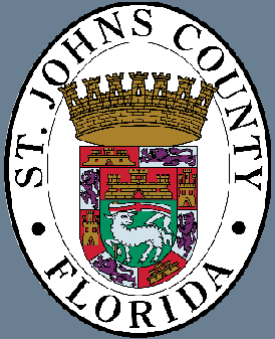
A public official may not:

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





# MEET THE RELATIVES



Father, Mother

Brother, Sister

Son, Daughter

Husband, Wife

Half Brother, Half Sister

Father-in-law, Mother-in-law

Brother-in-law, Sister-in-law

Daughter-in-law, Son-in-law

Nephew, Niece

Aunt, Uncle, 1st Cousin

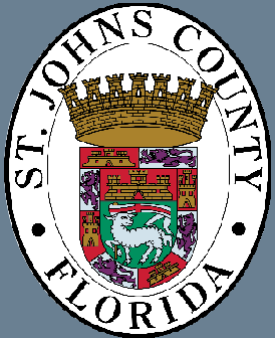
Stepfather, Stepmother

Stepsister, Stepbrother

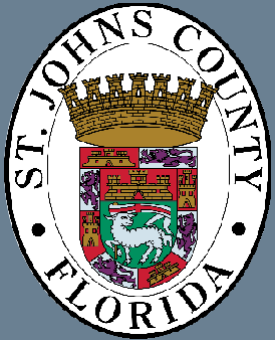
Stepson, Stepdaughter

# NON-RELATIVES

- “Relatives” do not include “significant others” or paramours.  
*See* CEO 02-3.
- Neither a man who is your mother’s sister’s husband (your aunt’s husband) nor a woman who is your wife’s brother’s wife (your wife’s sister-in-law) is your relative for purposes of § 112.3135(2)(a), F.S. *See* CEO 99-5; CEO 96-6.
- Neither is your former spouse’s child (former stepchild).  
*See* CEO 14-9.
- Start with the official, not the official’s spouse.

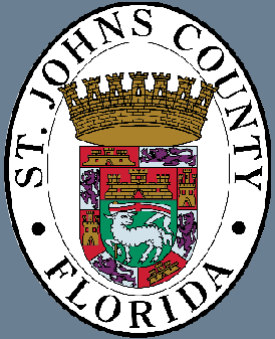


# INTERESTING NOTES

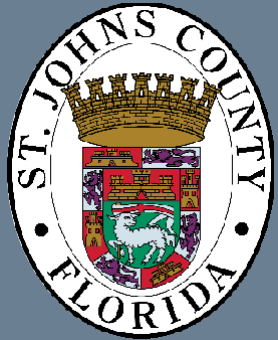


- The provision does not prohibit relatives from working in the same office.
- Generally, the provision applies even to uncompensated positions (with certain exemptions).
- The provision does not prohibit relatives from supervising one another (although that not might not be a good idea for countless reasons).
- The Commission has *grandfathered* certain nepotism situations (like where prohibited relationship develops after employment).

# EXEMPTIONS



- District school boards (*but see* § 1012.23, F.S.: a board member cannot supervise a relative; as of July 1, 2019, neither can the superintendent)
- Community college districts
- Individuals serving in a volunteer capacity and 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



# EXAMPLES

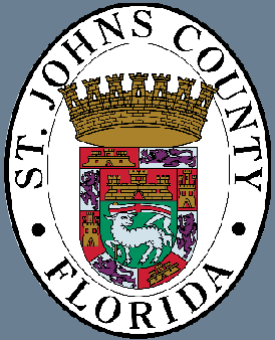
- CEO 18-17
- CEO 13-7
- CEO 13-1
- CEO 09-15

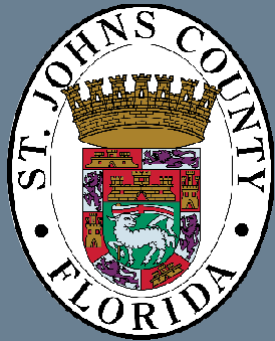
# IMPORTANT NOTE

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

“An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency . . . if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member.”

§ 112.3135(2)(a), F.S.





# Contact the Florida Commission on Ethics

The Florida Commission on Ethics  
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Tallahassee, Florida 32303  
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[www.ethics.state.fl.us](http://www.ethics.state.fl.us)

