

Ethical Standards of Interest to Municipal Attorneys



Codes of Conduct & Texas Law

Texas City Attorneys Association
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Today's Agenda

1. Common Codes of Conduct
2. Professional Codes
3. State Law
4. Municipal Codes
5. Attorney as Investigator



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Part 1: Common Codes of Conduct



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Ethics of Reciprocity



"In everything, therefore, treat people the same way you want them to treat you, for this is the Law and the Prophets."

Matthew 7:12

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10 Commandments

1. Thou shalt have no other gods before Me.
2. Thou shalt not make idols.
3. Thou shalt not take the name of the LORD your God in vain.
4. Thou shalt remember the Sabbath day, to keep it holy.
5. Thou shalt honor your father and your mother.
6. Thou shalt not murder.
7. Thou shalt not commit adultery.
8. **Thou shalt not steal.**
9. **Thou shalt not bear false witness against your neighbor.**
10. Thou shalt not covet thy neighbor's wife (house, car, animals, belongings, etc).



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Betty's Law

Thou Shall Not Embarrass me in Public



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Scouting

The Girl Scout Law

I will do my best to be:

- honest and fair
- friendly and helpful
- considerate and caring
- courageous and strong
- **respectful for what I say and do**
- **respect myself and others**
- **respect authority**
- **use resources wisely**
- make the world a better place
- be a sister to every Girl Scout.



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Honor Codes

West Point Military Academy:

“A cadet will not lie, cheat,
steal or tolerate those who do.”



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Part 2: Professional Codes



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American Society for Public Administration

3. Promote democratic participation.



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International City Management Association

Tenet 5. Submit **policy proposals** to elected officials; provide them with **facts** and **advice** on matters of policy as a basis for making decisions and setting community goals, and uphold and implement local government policies adopted by elected officials.



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International Institute of Municipal Clerks

- To so **conduct my public and private life as to be an example to my fellow citizens**;
- To be ever mindful of my neutrality and impartiality, rendering equal service to all and to extend the same treatment I wish to receive myself;



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Building Officials Association of Texas

Accept no form of personal favors or gratuity for public services rendered and conscientiously avoid all circumstances that could compromise professional integrity



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American Planners Association

Code of Ethics & Professional Conduct

We Shall Not:

- As Salaried Employee Moonlight without Permission
- Accept pay from others related to our public job
- Work on project for Employer that benefits Family member
- Use info to personal advantage



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Texas Bar Association

Texas Disciplinary Rules of Professional Conduct

Rule 1.13 “Organization as Client”

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents



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Part 3: State Law



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Conflicts of Interest

Tex. Loc. Gov't Code Ch. 171

- Local Public Officials (Members and Officers of Gov. Body)
- Applies if Official or 1st-Degree Relative Has **Substantial Interest** in:
 - Business Entity
 - Own 10% Voting Stock/Shares
 - Own \$15,000 of FMV
 - Receive >10% Gross Income
 - Real Property
 - Own \$2,500+ of FMV
- Must **Declare** (Through Affidavit)
- Must **Abstain** (Talking & Voting)
- On Any Matter Involving Entity / Property



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Incompatibility

- Common Law Rule (not Statutory)
- Case-By-Case Determination by Courts
- *Thomas v. Abernathy County Line ISD* (1927)
 - *Conflict of Loyalties*
 - *Conflict of Duties*
- Can't appoint yourself
- Can't be own supervisor
 - e.g., Councilmember can't be City Manager, Mayor can't be on School Board



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Public Disclosures

Tex. Loc. Gov't Code Ch. 176

- Applies to Local Government Officers
 - Mayors, Council Members, Executive Officers
 - Agents exercising discretion regarding **Contracts**
- Must File Conflicts Disclosure Statements (Form CIS)
 - Officer or Relative (1st Degree) Receives from Vendor
 - Business / Employment Income >\$2,500 in prior 12 mos.
 - Gifts >\$100 in prior 12 mos.
 - Officer Related to Vendor
 - 3rd Degree by Blood, 2nd Degree by Affinity
- When Vendor is seeking city business
- File w/in 7 days of becoming aware of facts



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Criminal Offenses- *Bribery*

Tex. Penal Code § 36.02

- Public Servant violates the law if they
 - Offer, Solicit, or Accept
 - Any Benefit as Consideration
 - For a Decision, Opinion, Vote, Recommendation, or Action



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Criminal Offenses- *Honorarium*

Tex. Penal Code § 36.07

- Public Servant May Not Solicit or Accept
 - Honorarium
 - For services that would not have been requested **but for official** duties or position
- Transportation, Lodging, Meals **OK** if related to speaking event
- Does not apply to something with no pecuniary gain or advantage
 - e.g., plaque, bouquet of flowers

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Criminal Offenses- *Gifts*

Tex. Penal Code § 36.08

- Public Servant May Not Solicit or Accept a Benefit
 - From a person subject to their jurisdiction (authority)
- Examples
 - Health inspector receiving gift from regulated business
 - Councilmember receiving gift from likely city contractor
 - Police officer receiving gift from inmate



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Criminal Offenses- *Gifts (Exceptions)*

Not Prohibited by Penal Code § 36.08

- Item worth <math>< \\$50</math> (except cash, negotiable instrument)
- Given on account of independent relationship
 - Family, personal, professional, business
- Fee for services provided outside official capacity
 - Must reflect value of work
- Food, Entertainment, Transportation, Lodging
 - When accepted as guest & reported (by lobbyist)
- Certain government-issued items
- Certain legal services provided to first responders
- Reported political contributions, lobby expenditures
- Unsolicited benefit: Donate to tax-exempt charity



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Criminal Offenses- *Misuse Info*

Tex. Penal Code § 39.06

- A Public Official cannot use
- For Personal Gain or Speculation
- Knowledge acquired by holding public office
- Not available to the general public



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Criminal Offenses- *Abuse of Office*

Tex. Penal Code § 39.02

- Public Servant commits offense *if*
 - Intends to obtain a **benefit**, or
 - Intends to **harm** or **defraud** another and
 - Violates law regarding office held, or
 - Misuses government property, services, personnel, or other



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Part 4: Municipal Codes of Ethics



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Municipal Codes of Conduct

- Home-Rule Charters & / or
- Ethics Ordinances
 - Board of Ethics
 - Process & Criteria
 - Representation of Others
 - Moonlighting
 - Revolving Door
 - Purchasing Rules
 - Vendor Disclosures
 - Lobbying
 - Reprimands, Sanctions



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Sanctions for Frivolous Complaints

Lakshmana Viswanath v. City of Laredo

04-20-00152-CV (Tex. App.– San Antonio, April 14, 2021)

- City Ethics Commission properly ruled complainant's filing was frivolous and could award sanction
- Commission had:
 - Dismissed complaints against 2 ACMs
 - Found complaints frivolous
 - Admonished 1 Complainant
 - Ordered other Complainant to pay \$500 civil fine + \$7,900 in attorneys fees



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Part 5: City Attorney as Investigator



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Investigations

- **Garrity Warning:** Won't Use in Criminal investigations
Garrity v. New Jersey, 385 U.S. 493 (1967)
- **Brady Rule:** Disclose Exculpatory Evidence
Brady v. Maryland, 373 U.S. 83 (1963)
- **Upjohn Warning:** Attorney Representation
Upjohn v. United States, 449 U.S. 383 (1981)
- **Disavow Privilege**
Moore v. Yarbrough, Jameson & Gray, 993 S.W. 2d 760 (1999)
- **Protect the Privilege**
In Re: Kellogg Brown and Root, Inc., 756 F.3d 754 (2014)

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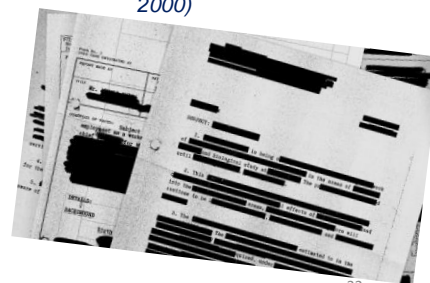
Think Ahead about Open Records

- **Facts:**
 - “neutral recital” of facts might not be privileged
 - “purely factual information” that is not deliberative in nature might not fall under Agenda Memoranda exception
- **Attorney as Investigator:**
 - A/C Priv might not apply to communications between a client and an attorney engaged in a *non-legal* capacity
 - Document that purpose of investigation is to facilitate provision of legal advice
 - State that method and scope influenced by legal training
 - Note that facts included / excluded are determined by legal experience
 - Label at outset intention not to make docs public

Tex. Att'y Gen. OR2000-2114 (2000) & OR2000-2756 (2000)

Arlington ISD v. Tex. Att'y Gen., 37 S.W.3d 152 (Tex. App.-Austin 2001, no pet. h.)

Harlandale ISD v. Cornyn, 25 S.W. 3d 328 (Tex. App.-Austin 2000)



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Best Practices

- Make Training a Priority
- Be familiar with the Law & Codes
- Engage in a Dialogue
- Network with honorable colleagues
- Know your place
- Remember you are part of a team
- Imagine Your Worst Enemy Learns
- Put Your Citizens 1st
- Remember Whose Money It Is
- Remember Why You Got Into Public Service in the first place



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Do your part to Foster Integrity at City Hall



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