

**Ethics & Conflicts of Interest  
Civility & Meetings**

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**MUNICIPAL CLERKS ASSOCIATION  
OF NEW JERSEY**

May 2, 2019  
Atlantic City, New Jersey

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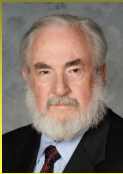
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**William John Kearns, Jr.**

HELMER, CONLEY & KASSELMAN, P.A.  
ATTORNEYS AT LAW

Willingboro, New Jersey

General Counsel, NJ League of Municipalities  
Past President, International Municipal Lawyers Association

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**Ethics and Conflicts of Interest**



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**Ethics and Conflicts of Interest**

**Ethical Conduct**

- Ethical conduct is more than merely meeting the standards required by law.
- Ethical conduct means doing the *right* thing simply because it is the right thing to do.
- Violating legal standards for conduct means that legal sanctions can be imposed.

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We do live in a fishbowl .....  
..... and EVERYBODY is watching!!

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**Ethics and Conflicts of Interest**

**Local Government Ethics Law**

- Establishes minimum standards of conduct.
- Requires financial disclosure statements of certain officials.
- Enforced by the Local Finance Board.
- Local Ethics Boards allowed.
- Sanctions include fines.

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**Ethics and Conflicts of Interest**

**Standards of Conduct**

- No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

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**Ethics and Conflicts of Interest**

**Standards of Conduct**  
**Authority Members**

- No independent local authority shall, for one year after the termination of office of a member of that authority:
  - (1) award any contract which is not publicly bid to a former member;
  - (2) allow a former member to represent, appear for or negotiate on behalf of any other party before that authority;
  - (3) employ for compensation, except pursuant to open competitive examination (civil service) any former member of that authority.
- The restrictions also apply to any business organization in which the former authority member holds an interest.

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**Ethics and Conflicts of Interest**

**Standards of Conduct**

- No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others

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### Ethics and Conflicts of Interest



We're all SHOCKED, SHOCKED to learn that there has been political influence in the award of contracts.

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal *involvement* that might reasonably be expected to impair his objectivity or independence of judgment

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties

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**Ethics and Conflicts of Interest**

**Standards of Conduct**

- No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that it was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.
- This provision shall not apply to ... an announced candidate for elective public office, if the local government officer has no reason to believe that the contribution ... was given with the intent to influence the local government officer in the discharge of his official duties

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**Ethics and Conflicts of Interest**

**Standards of Conduct**

Insider Trading - Local Government Version

- No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated

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**Ethics and Conflicts of Interest**

**Standards of Conduct**

- No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application or other matter pending before any agency in the local government in which he serves. This provision shall not be deemed to prohibit one local government employee from representing another local government employee where the local government agency is the employer and the representation is within the context of official labor union or similar representational responsibilities

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Ethics and Conflicts of Interest

Standards of Conduct

- No local government officer shall be deemed in conflict with these provisions if, by reason of his participation in the enactment of any ordinance, resolution or other matter required to be voted upon or which is subject to executive approval or veto, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group

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Ethics and Conflicts of Interest

Standards of Conduct

- No elected local government officer shall be prohibited from making an inquiry for information on behalf of a constituent .....
- Provided that no fee, reward or **other thing of value** is promised to, given to or accepted by the officer or a member of his immediate family, whether directly or indirectly

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Ethics and Conflicts of Interest

Financial Disclosure

- Each source of fees and honoraria having an aggregate amount exceeding \$250 from any single source for personal appearances, speeches or writings received by the local government officer or a member of his immediate family during the preceding calendar year

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**Ethics and Conflicts of Interest**

**Financial Disclosure**

- Each source of gifts, reimbursements or prepaid expenses having an aggregate value exceeding \$400 ... excluding relatives ... received by the officer or a member of his immediate family during the preceding calendar year

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**Ethics and Conflicts of Interest**

**Financial Disclosure**

- The name and address of all business organizations in which the local government officer or a member of his immediate family had an interest during the preceding calendar year

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**Ethics and Conflicts of Interest**

**Financial Disclosure**

- The address and brief description of all real property in the State in which the officer or a member of his immediate family held an interest during the preceding calendar year.

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### Ethics and Conflicts of Interest

#### Penalties

##### Elected Officer or Employee

- An elected local government officer or employee found guilty ... shall be fined not less than \$100.00 nor more than \$500.00
- Expect that the range of penalties will be increased, probably to a \$10,000 maximum, the same as the State Ethics Code

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### Ethics and Conflicts of Interest

#### Penalties

##### Appointed Official or Employee

- An appointed officer or employee found guilty ... shall be fined not less than \$100.00 nor more than \$500.00;
- The board **shall** report its findings to the office or agency having the power of removal or discipline of the appointed officer or employee and **may** recommend that disciplinary action be taken

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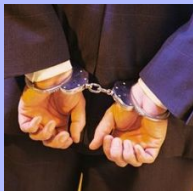
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### ANOTHER PENALTY

An offense may be a CRIMINAL violation




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**Ethics and Conflicts of Interest**

**Criminal Code**  
N.J.S.A. 2C:27-10

- A person commits a crime if the person, as a public servant:
- directly or indirectly, **knowingly** solicits, accepts or agrees to accept any benefit, whether the benefit inures to the public servant or another person, to influence the performance of an official duty or to commit a violation of an official duty.

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**Ethical Considerations**

**Situation**

Employee places an order for office supplies, and the supplier provides a “gift” based on the size of the order.

The employee receives the “gift” and keeps it, because it was not part of the supplies ordered for the municipality.

Is that improper?

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**Ethical Considerations**

**Situation**

After the meeting several of the governing body members and the attorney and the engineer go to the local diner for coffee and a hamburger.

At the end of the evening, the attorney or the engineer picks up the check.

Is that trivial?  
Does that influence the public officials?

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**Ethical Considerations**

**Situation**

One of the town officials asks two Public Works employees to work on Saturday to cut his lawn .....

.... And offers to pay them for the work

.... The two employees have their own "lawn service"

.... How do you avoid the "appearance" of impropriety

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**Ethical Considerations**

**Situation**

- The Developer calls and thanks you for all of your cooperation during the process of obtaining the necessary approvals. Now that the application process is completed and permits issued, he remembered that your son was a big baseball fan. They offer you two tickets for the Phillies-Yankees-Mets (team of your choice) game on Saturday night, noting that they are GREAT seats.
- Any difference if it was for a Minor League game?
- How about a coupon for a coffee at a WaWa?

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**Ethical Considerations**

**Situation**

- A contractor who does work for the municipality mentions to you that he was contacted by Council Member A who wants some work done on his house and who said "I expect you to give me a good price, because you know that I have to vote on your contracts with the town."
- Is the Council Member corrupt or just stupid?
- What do you do?
- Do you have any obligation to report it to anyone?

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## Ethical Considerations

### Situation

- A contractor who frequently interacts with the Construction office drops off a plate of cookies .....




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## Ethics and Conflicts of Interest

### Mark Civarella

Luzerne (PA) County President Judge

Involved in sentencing juveniles to serve time for minor offenses in private jail facilities in return for \$2.8 million in kickbacks.

Found Guilty of Racketeering  
Resigned from office  
Disbarred  
Sentenced to 28-years in prison



Hundreds of juvenile sentences  
OVERTURNED

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## Ethics and Conflicts of Interest

### Diane Marie Hathaway

Justice, Michigan Supreme Court



Elected: November 4, 2008  
Resigned: January 21, 2013  
Entered Guilty Plea to Mortgage Fraud: January 29, 2013  
Sentenced to 1-year in Federal prison: May 28, 2013

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### Ethics and Conflicts of Interest

“I’m so sorry.”

JOSE TORRES, former Mayor of Paterson NJ



As he was sentenced to 5-years in prison for using city employees as workers at a warehouse owned by his family. (November 14, 2017)

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### Ethics and Conflicts of Interest

Corey Kemp

Former Philadelphia City Treasurer  
After conviction on 27 counts of corruption related charges  
*Philadelphia Inquirer*, May 15, 2005  
[On July 19, 2005, Kemp was sentenced to 10-years in prison]



*I wish I didn't do some of the things or go to some of those places because my life isn't worth a trip to the Super Bowl. My life ain't worth a lunch.*

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### Ethics and Conflicts of Interest

Zheng Xiaoyu

Former Commissioner  
China's Food and Drug Administration  
Convicted of taking \$850,000 in bribes from companies seeking approval for medicines.



Convicted - May 29, 2007  
Executed - July 10, 2007

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**Ethics and Conflicts of Interest**

**Bill's Guideline Number 1**

- If your worst political enemy found out what you did and raised the issue at a public meeting, would you be embarrassed in explaining your conduct and in trying to justify your actions. If so, then don't do it in the first place.

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**Ethics and Conflicts of Interest**

**Bill's Guideline Number 2**

- If your mother found out what you did, would you find it embarrassing to explain to your mother why you did it? If so, then don't do it in the first place.

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**Ethics and Conflicts of Interest**

**Bill's Guideline Number 3**

- When you get caught are you going to find it difficult to explain to your family - especially your children - why you have been taken from your home in handcuffs?

[Note: You will be caught, no matter how careful or secretive you think that you have been.]

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### Ethics and Conflicts of Interest

#### Bill's Guideline Number 4

- Do you really think that you would have received that gift if you were not in an official position able to influence something for the gift giver? If you would not have received the gift, except for your official position ..... then you probably should not accept it.

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### eMail & Social Media Issues




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### ELECTRONIC COMMUNICATIONS

#### E-Mail Issues

"The estranged wife of a millionaire developer found slain this month in his home fantasized in an e-mail last year about "pummeling him to death," but her lawyer said Tuesday she was only venting her frustrations over her husband's extensive legal and other troubles."

**Stamford, CT**  
**Associated Press, April 19, 2006**

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**ELECTRONIC COMMUNICATIONS**

**E-Mail Issues**

The President of the University of Tennessee at Knoxville resigned after intimate e-mail messages between the President and an Administrator were published in the local newspaper.

June, 2001

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**ELECTRONIC COMMUNICATIONS**

**E-Mail Issues**

Legislator thinks that his e-mail messages to a female lobbyist containing explicit sexual messages are "private" ..... And then ..... The New York Post publishes almost 300 of the very explicit messages on their website.

March, 2013

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**ELECTRONIC COMMUNICATIONS**

**E-Mail Issues**

An attorney representing Eli Lilly accidentally sent an e-mail, intended for another lawyer for the company to a reporter with the same last name. The e-mail contained information on confidential settlement negotiations between Eli Lilly and the US Justice Department on an investigation into Eli Lilly's marketing of a drug. The story of the negotiations was published in the *New York Times*.

February, 2008

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**ELECTRONIC COMMUNICATIONS**

**E-Mail Issues**

Mayor sends an e-mail from his personal e-mail account to a local reporter on an issue involving potential disciplinary action against a police officer. A request is submitted for the e-mail under OPRA and common law. Clerk and Mayor argue it was not official but only his private "political" communication.

Court says WRONG. Orders disclosure.

*Geiger v Borough of Englewood Cliffs*  
 NJ Superior Court, Bergen County  
 January 19, 2018

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**ELECTRONIC COMMUNICATIONS**

**E-Mail Issues**

**DANGER ... DANGER ... DANGER**

UNINTENTIONALLY chatty – disclosing personal information ..... Yours or of someone else.

Use a telephone .

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**ELECTRONIC COMMUNICATIONS**

**Tip #1**

**Do not compose – and especially DO NOT SEND an e-mail when you are angry.**

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**ELECTRONIC COMMUNICATIONS**

**Tip #2**

**Check and then check again the name and address of your intended recipient.**

**And then check it again before you SEND.**

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**ELECTRONIC COMMUNICATIONS**

**Tip #3**

**Verify the attachment to make sure that it is the appropriate and correct item before you attach it.**

**To avoid errors, never attach something named "Document.pdf" or "Document.doc" or "Scan478897656879" – make sure your documents are named so that you can easily identify the attachment.**

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**ELECTRONIC COMMUNICATIONS**

**Tip #4**

**Do not eMail inside jokes or use derogatory nicknames to reference others, whether officials, co-employees, citizens, consultants.**

**Assume that your eMail will be read by the very person that you are referencing or about whom you are making the joke.**

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## ELECTRONIC COMMUNICATIONS

### Tip #5

#### Avoid DANGER phrases

- I really shouldn't put this in writing.
- Delete this e-mail as soon as you have read it.
- Don't tell anyone else, but .....
- Don't ask. You don't want to know.
- I'm not sure this is really legal, ethical, proper.
- The attachment is for your eyes only.

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## ELECTRONIC COMMUNICATIONS

### Tip #6

After composing your e-mail, save it as a draft and go back and re-read it a half-hour later. Then remember all of the other rules as you edit it and before you send it.

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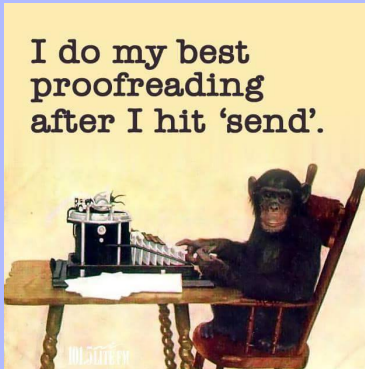
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## ELECTRONIC COMMUNICATIONS

I do my best proofreading after I hit 'send'.




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**ELECTRONIC COMMUNICATIONS**

Do you Tweet?




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**ELECTRONIC COMMUNICATIONS**

Be careful what you Tweet



Don't think your tweets are private. Assume that they will be seen by the person that you LEAST want to see them.

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**ELECTRONIC COMMUNICATIONS**

**twitter**

- Twitter is a way to send short messages – not more than 140 characters – on the author's Twitter page that can be read by any of the author's followers. Those followers can post responses.
- Once sent, the messages can be re-sent and distributed to an ever-increasing number of people.
- Messages cannot be recalled.
- The Library of Congress has and is archiving ALL Twitter messages ever sent.

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# ELECTRONIC COMMUNICATIONS



Twitter mistakes  
come back to  
haunt people

**Former** Congressman Anthony Weiner (New York) sent “inappropriate” twitter messages with photo attachments to a number of women. The twitter messages were posted and then forwarded by others.

- He claimed that his Twitter account was “hacked” - He Lied.
- He was (a) careless (b) stupid (c) failed to understand the internet.
- His political career came to an abrupt end –
- So it was thought ..... but then he was a candidate for Mayor of the City of New York – and lost in the Primary

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# ELECTRONIC COMMUNICATIONS



Michigan Judge Wade McCree Jr

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# ELECTRONIC COMMUNICATIONS

Smart People Do Dumb Things



Michigan Judge Wade McCree Jr

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### ELECTRONIC COMMUNICATIONS

Smart People Do Dumb Things  
and do not learn from mistakes

Michigan Judge Wade McCree Jr

Admits to having an affair – in his chambers – with the Plaintiff in a case in his court – and impregnating her.

He has been removed from office by the Michigan Supreme Court (3-26-14) which also ruled that if he was re-elected in November 2014, he will be suspended for the entire 6-year term. He was not elected.

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### ELECTRONIC COMMUNICATIONS



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### ELECTRONIC COMMUNICATIONS

#### facebook

Facebook helps you connect and share with the people in your life.



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**ELECTRONIC COMMUNICATIONS**

**facebook**

- Available to anyone over 13 with an e-mail address
- Profiles of the user
- Text messages
- Photographs
- Available to almost anyone
- Shows up in GOOGLE searches

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**Social Media and Litigation**

- While your case is active, do not use social media.
- Don't. Period. This includes everything from Facebook, to Twitter, to Instagram, to blogging — even if you're "anonymous" or doing so under a pseudonym.
- The opposing side will be able to find anything you post and will use it against you. You should pretend that anything you post will end up on the front page of the newspaper.
- Finally, don't ever send confidential information over social media. Social media is never confidential!

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**ELECTRONIC COMMUNICATIONS**

In this day of wide dissemination of thoughts and messages through transmissions which are vulnerable to interception and readable by unintended parties, armed with software, spyware, viruses and cookies spreading capacity; **the concept of internet privacy is a fallacy upon which no one should rely.**

*New York v. Klapper, (N.Y. City Crim. Ct. Apr. 28, 2010)*

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### ELECTRONIC COMMUNICATIONS

In all electronic communications, e-mail, Twitter, Facebook, social media, recall the words from the New Testament, Luke 8:17

“For nothing is hidden,  
that will not be revealed;  
nor anything secret,  
that will not be known  
and come to light.”

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### Ethics and Conflicts of Interest



The one thing that I want to leave my children is my good name.

Theodore Roosevelt  
Governor of the State of New York  
President of the United States

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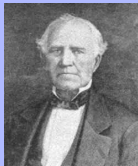
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### Ethics and Conflicts of Interest

I would give no thought of what the world might say of me, if I could only transmit to posterity the reputation of an honest man.



**Sam Houston**  
(1793-1863)  
Governor of the State of Tennessee  
President of the Republic of Texas  
United States Senator  
Governor of the State of Texas

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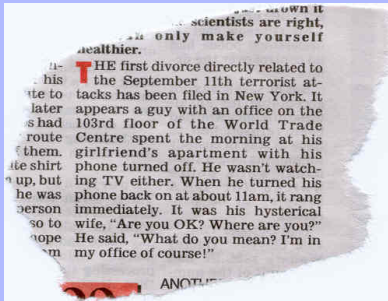
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## Ethics & Personal Integrity

### You will get caught!




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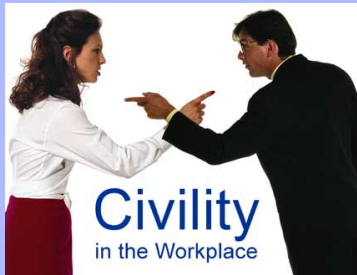
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## Choose Civility




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**CIVILITY**  
ALL DAY - EVERY DAY

NJ League of Municipalities Educational Foundation

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## Choose Civility

Civility? What's that?

- Civil discussions with colleagues
- Civil discussions with the public
- Civil discussions with staff and employees
- Incivility = Incivility

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## Choose Civility

Reacting to Audience Incivility



- Citizen crudely insulting Mayor
- Citizen “rolling eyes” to express displeasure
- How to defuse the situation

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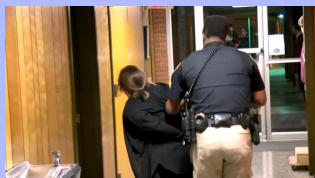
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## Choose Civility

WRONG RESPONSE!!



- Former Teacher of the Year
- Speaks out politely against raise for Superintendent
- Arrested, handcuffed, taken to jail because she exceeded the 3-minute time limit

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## Choose Civility

### Hostility and Safety

- Citizens bring their complaints to the Council meetings and want to know that they are heard.
- Citizens who feel that they have been treated unfairly can exhibit hostility.
- Sometimes citizens are hostile because of the topic or just because they are angry or having a bad day
- If not handled well, the hostility can turn into violence

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## Choose Civility

### Hostility and Safety




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## Choose Civility

### Hostility and Safety

- Panama City, Florida (2010)
  - Citizen upset comes to Board of Education meeting, fires at Board members, fortunately only the gunman was killed.
- Kirkwood, Missouri (2008)
  - Citizen upset comes to Council meeting, kills two council members, other officials
- Clarksville, Tennessee (2007)
  - Citizen upset at zoning variance denied, approaches Council, says “you’ve put me out of business,” draws gun and commits suicide.

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## Choose Civility

### Hostility and Safety

- Suwanee, Georgia (April 10, 2013)
  - Man in foreclosed home, about to be evicted, calls in a false heart attack report. Firefighters respond with truck and ambulance. He takes 5 firefighters hostage. Demands that utility and cable services be turned back on. SWAT team kills the hostage-taker.
- Ross Township, Pennsylvania (August 5, 2013)
  - Rockne Newell, evicted from his home by court order due to unsanitary conditions and code violations blasted his way into a Board of Supervisors meeting killing the zoning officer and two residents at the meeting. He entered a guilty plea in May, 2015, and was sentenced to three consecutive life terms plus 61 to 122 years on related charges.

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## 10 Commandments of Civility

1. Thou shalt not rudely interrupt a colleague midsentence; nor "speak over" a colleague while she/he is speaking.
2. Thou shalt not assume that shrillness of tone is a substitute for substantive dialogue.
3. Thou shalt treat the members of the public with the same courtesy as you would if they were members of your body—and perhaps more importantly, require that they treat you and your colleagues the same way.

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## 10 Commandments of Civility

4. Thou shalt not resort to "zingers" designed solely to embarrass your target.
5. Thou shalt, where possible, explore areas of common ground where legitimate disagreements exist, in an effort to move forward on matters of public importance.
6. Thou shalt not allow legitimate critique of policy and practice to become a personal attack aimed at the person who devised the policy or implements the practice.

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### 10 Commandments of Civility

7. Thou shalt always recognize that your colleagues were also elected, just as you were, and deserve the same level of respect for having run and won.

Example: Remember that the members of the public who elected the colleague that you don't like, may be the same folks who send you packing next time around.

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### 10 Commandments of Civility

8. Thou shalt not ridicule or belittle a colleague, or a member of the public, simply because he or she disagrees with you on an issue.

Example: Believing that the words "under God" belong in the Pledge of Allegiance doesn't make someone a "theocratic moron." Conversely, someone who articulates a position urging that the words "under God" should be excluded from the Pledge of Allegiance, doesn't make that person a "heathen."

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### 10 Commandments of Civility

9. Thou shalt not pretend something is much more important than it really is, simply to score points with an audience.

10. Thou shalt always remember that it is ok to agree to disagree, and that reasonable people can indeed disagree reasonably.

Credit for the 10 Commandments of Civility go to John C Gillespie, NJLM Associate Counsel and Partner, Parker McCay (Mount Laurel, NJ), from an article for published in *NJ Municipalities*.

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### Choose Civility



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**CIVILITY  
SPOKEN HERE**

**ALL DAY  
EVERY DAY**

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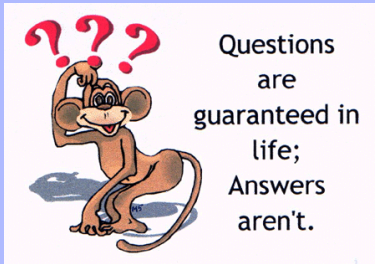
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??? Questions ???



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**William John Kearns, Jr.**

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