



**2019 County and District Clerks' Association
of Texas Winter Education Conference**

January 28-31, 2019

Embassy Suites by Hilton Hotel Conference Center & Spa, San Marcos

Piece of the Puzzle, Part of the Whole

Breakout 3: Admin

- Ethics for Clerks

Ms. Katherine Howard
Associate General Counsel

Ethics for Clerks

Katherine Howard, Associate General Counsel

January 2019



Questions? Give us a ring!



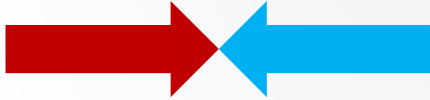
Why are we here?

1
Conflicts
Who you can and can't do business with.

2
Nepotism
Who you can and can't hire.

3
Ethics
Other ways you can get in trouble.

CONFLICTS – THE BASICS



WHAT IS A "SUBSTANTIAL INTEREST"?



CONFLICT OF INTEREST TEST

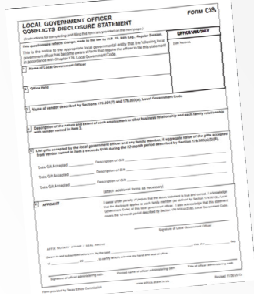


CONFLICTS & OATH OF OFFICE



"no direct or indirect interest in contract with the county"

WHAT IF YOU HAVE A CONFLICT?



**OFFICIAL
MISCONDUCT**


2

Nepotism


Who you can and can't hire.

?

NEPOTISM TERMS

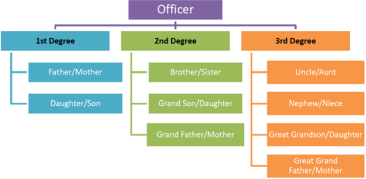


consanguinity

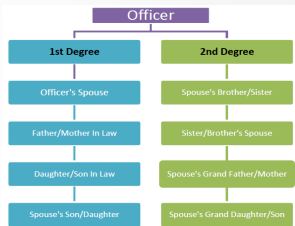


affinity

**CONSANGUINITY
(RELATIONSHIP BY BLOOD)**



AFFINITY (RELATIONSHIP BY MARRIAGE)



EXCEPTIONS

- cousins ok
- already on the job
- employment changes
- salary increases




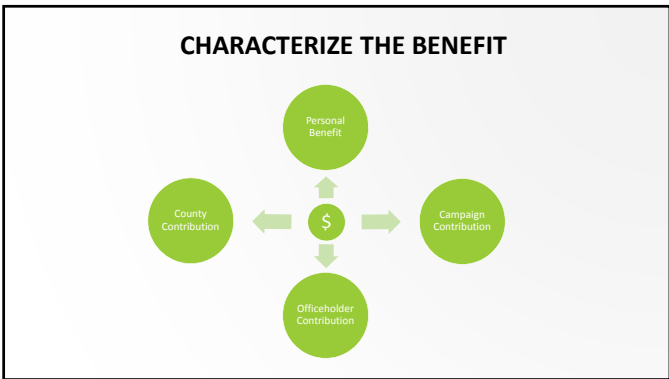
**OFFICIAL
MISCONDUCT**

3
Ethics
Other ways you can get in trouble.
?

ETHICS – CHAPTER 36

BENEFIT





CHAPTER 36 – BRIBERY



CHAPTER 36 – OTHER ISSUES



PERSONAL BENEFIT – EXCEPTIONS



TITLE 15 – CONTRIBUTIONS



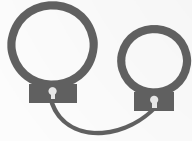
**CHAPTER 37 –
FALSIFICATION OF RECORDS**



CHAPTER 39 - ABUSE OF OFFICE



**CHAPTER 39 –
OFFICIAL OPPRESSION**

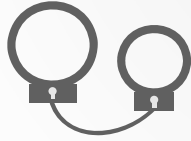


**CHAPTER 39 –
MISUSE OF INFORMATION**

CHAPTER 39 – PROSECUTION



CHAPTER 39 –
LAW ENFORCEMENT
RELATED ISSUES



**OFFICIAL
MISCONDUCT**

AFFIRMATIVE DEFENSE



OFFICIAL IMMUNITY



Questions? Give us a ring!



ETHICS FOR CLERKS

JANUARY 2019

CONFLICTS OF INTEREST

THE BASICS

- Must not do business with yourself, your family, or an entity you are involved with, and you must follow the law exactly.
- You have a conflict of interest if:
 - you or a family member has a substantial interest in a business entity or real property subject to action by the commissioners court; and
 - the action would have a special economic effect distinguishable from the general effect on the public.

WHAT IS A "SUBSTANTIAL INTEREST"?

Local Government Code Chapter 171 test for "substantial interest" in a business entity or real property:

- Own 10% or more voting stock or shares
- Own 10% or more or \$15,000 or more of fair market value
- Receive funds exceeding 10% of annual gross income
- Equitable or legal ownership equal to \$2,500 in real property
- Same standard applies for relatives of the 1st degree

CONFLICT OF INTEREST TEST

Two part test for conflicts of interest:

- Substantial interest analysis
- Special economic effect analysis

CONFLICTS AND OATH OF OFFICE

Local Government Code Chapter 171 supersedes Local Government Code 81.002 and common law strict standard contained in county judge and commissioner's oath of office: no direct or indirect interest in contract with the county.

WHAT IF YOU HAVE A CONFLICT?

- You are prohibited from participating in a vote if it is reasonably foreseeable that the action could confer an economic benefit on related business entity or real property.
- If you have a conflict of interest, you must:
 - file an affidavit with the county clerk that describes the nature and extent of your conflict
 - abstain from any discussion
 - abstain from any action
- You do not need to leave the dais, especially if this will affect the quorum.
- You must also file affidavit and abstain if a person related to you in the first degree of consanguinity (blood) or affinity (marriage) owns a substantial interest in a business entity.

PENALTIES – CONFLICT OF INTEREST

- Action is not voidable unless it would not have been approved without the vote of the person with the conflict.
- A knowing violation is:
 - Class A misdemeanor
 - Fine: up to \$4,000
 - Jail: up to a year
 - Both fine and jail.
 - **Official misconduct (automatic removal)**

NEPOTISM

THE BASICS

- No official or manager may hire a relative who will work under his or her supervision.
- Regulated by Government Code Chapter 573 (Degrees of Relationship; Nepotism Prohibitions)

NEPOTISM TERMS

Two important legal terms:

- **Consanguinity:** blood relatives (one person descended from another or having a common ancestor)
- **Affinity:** related by marriage (spouse or person married to blood relative)

HIRING

- **You may not hire blood relatives within 3rd degree of consanguinity:** parents, siblings, children, aunts and uncles, nieces and nephews, grandparents, grandchildren, great grandparents and great grandchildren.
- **You may not hire in-laws within 2nd degree of affinity:** spouse, spouse's children, spouse's parents, spouse's siblings, spouse's grandparents, spouse's grandchildren, or a spouse of your sibling.

NEPOTISM- EXCEPTIONS

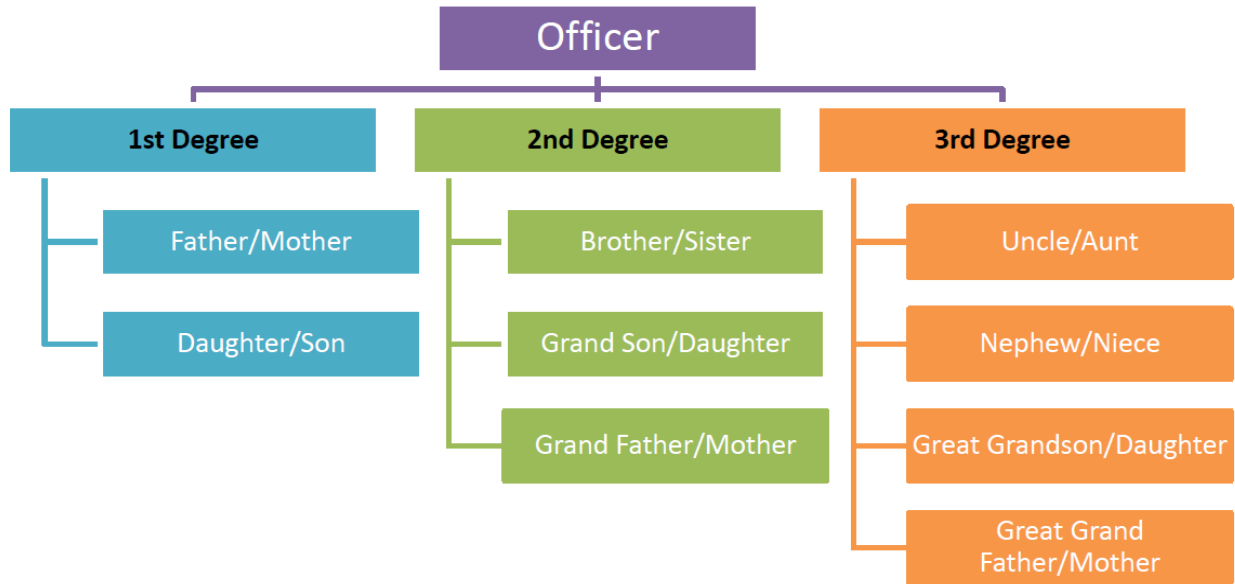
- Special rules for step-relatives and divorce – talk to your county attorney.
- Cousins are OK.

- If person is already working continuously before election or appointment of a relative he or she can keep working if they have been on the job at least:
 - 1 year for elected county officer
 - 30 days for appointed public official
- Employee entitled to remain on the job due to continuous employment rule cannot:
 - Get a promotion (can get cost of living raise)
 - Get demoted or fired
- Commissioners court member may vote to approve budgeted salary increase for spouse who is also elected official if s/he abstains from the line item increase for spouse.

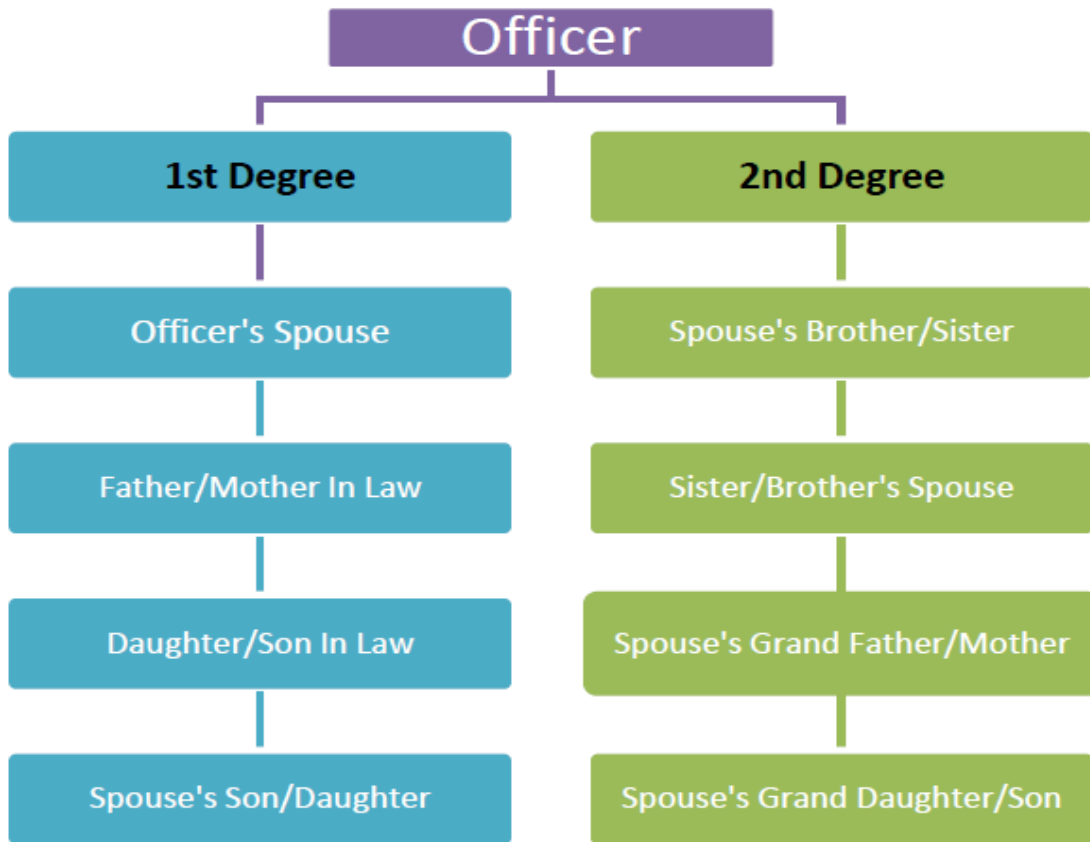
PENALTIES - NEPOTISM

- Violations are for:
 - Hiring or appointing a relative.
 - Influencing another to appoint or hire a relative.
 - Trading favors by voting to hire another official's relative in exchange for a vote to hire your relative.
 - Approving payment of compensation for ineligible person, if you know they are ineligible.
- Can't delegate employment responsibilities to avoid a violation.
- Never vote on salary for relative.
 - Violation is a misdemeanor:
 - Fine: \$100 minimum to \$1,000 maximum
 - **Official misconduct (automatic removal)**

NEPOTISM CHART – CONSANGUINITY (RELATIONSHIP BY BLOOD)



NEPOTISM CHART – AFFINITY (RELATIONSHIP BY MARRIAGE)



ETHICS

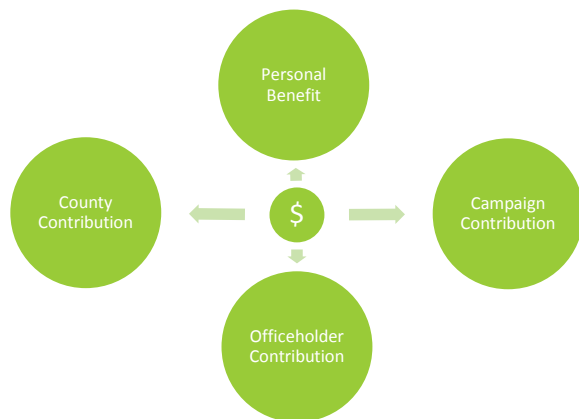
THE BASICS

- Relevant Penal Code provisions are:
 - Chapter 36: Bribery and Corrupt Influence
 - Chapter 37: Perjury and Other Falsification
 - Chapter 39: Abuse of Office
- These apply to all elected officials, with some special provisions for law enforcement.
- The Texas Ethics Commission has issued opinions and other guidance related to these statutes.

ETHICS – CHAPTER 36

- All Chapter 36 violations have a common element – receipt of a “benefit”.
- A benefit is defined as anything reasonably regarded as a pecuniary gain or advantage – this means anything of value, not just money.
- You may be considered to have received a benefit if a gift was given to someone in whose welfare you have a direct and substantial interest (spouse and children).
- Why you are given benefit controls whether you can take it and what you can do with it.

CHARACTERIZE THE BENEFIT



- Personal Benefit (bribe?)
- County Contribution (only CC can accept)
- Office-holder Contribution (limits on use)
- Campaign Contribution (limits on use)

CHAPTER 36 – BRIBERY

- NEVER solicit or accept any benefit as consideration for an exercise of official discretion – this is BRIBERY.
- It is an offense even if:
 - you don't have the actual authority to do what you promised
 - it occurred before or after you acted
 - you are no longer in office

CHAPTER 36 – OTHER ISSUES

- You may not solicit, accept, or agree to accept an honorarium or gift in consideration of services provided if you would not have been asked to speak “but for” your official position or duties.
- You may not solicit, accept or agree to accept a gift from a person you know is :
 - Subject to your regulation
 - Likely to become interested in any contract, purchase, or transaction over which you can exercise discretion

PERSONAL BENEFIT – EXCEPTIONS

- Value less than \$50, unless cash or negotiable instrument
- Food, lodging, or transportation accepted as a guest (and properly reported)
- Kinship, independent business relationship, or political contribution

TITLE 15 – CONTRIBUTIONS

- You should also be aware of Election Code Title 15 related to campaign and officeholder contributions.
- You may not take a campaign contribution from a corporate source.
- You may only take money or a thing of value from a corporation as an officeholder if it is for an expenditure that would otherwise be reimbursable with public funds.
- “Reimbursable with public money” means the governmental body has the authority to

reimburse an officeholder for an expense but does not require actual reimbursement or available funds.

- Only the county, through the commissioners court, may accept a contribution from a corporation or other prohibited source.

CHAPTER 37 - FALSIFICATION OF RECORDS

Tampering with a governmental record is:

- Knowingly making a false entry in or alteration of a governmental record
- Making, presenting, or using any record knowing it is false, with the intent that it be taken as genuine
- Intentionally destroying, concealing, removing, or impairing the availability of a governmental record

CHAPTER 39 - ABUSE OF OFFICE

Abuse of official capacity is when a public servant intends to obtain a benefit or harm or defraud another and:

- Violates a law related to his or her office or employment; or
- Misuses government property, services, personnel, or any other thing of value in the official's custody or possession.

CHAPTER 39 - OFFICIAL OPPRESSION

Official oppression is when a public official, acting under color of his or her office or employment, intentionally:

- Mistreats or unlawfully arrests a person
- Denies or deprives a person of any right
- Subjects a person to sexual harassment

CHAPTER 39 - MISUSE OF INFORMATION

Misuse of official information is when a public servant uses or relies on information that is not public to:

- Acquire or help another to acquire an interest in any property, transaction, or enterprise
- Speculate or help another to speculate based on non-public information

- Disclose non-public information (prohibited from disclosure under Public Information Act)

CHAPTER 39 – PROSECUTION

A county or district attorney has a duty to initiate proceedings against a county official entrusted with public funds if the attorney learns that the official is abusing or neglecting the official's duties.

CHAPTER 39 - LAW ENFORCEMENT RELATED ISSUES

- A person may not violate the civil rights of a person in custody.
- A person may not engage in sexual activity with a person in custody.
- A person required to give notice of the death of a prisoner commits a violation if he or she fails to investigate and report the death.

ETHICS – PENALTIES

- Conviction for any ethical violation is probably **official misconduct** – intentional, unlawful behavior related to the official duties of a public officer, resulting in **automatic removal**.
- Misuse of public property
Class C misdemeanor to 1st degree felony depending on the value of use of the public resource misused.
- Bribery
2nd degree felony
 - Fine up to \$10,000
 - Jail in state facility from 2 to 20 years
- Class A misdemeanors include:
 - Accepting an honorarium
 - Accepting a gift from a person subject to a public official's regulation
 - Accepting most illegal campaign contributions
 - Tampering with a governmental record
 - Penalty:
 - Fine up to \$4,000
 - Jail up to one year
 - Both fine and jail

- Tampering with governmental record with intent to defraud or harm another is a state jail felony.
- Accepting corporate contributions:
 - 3rd degree felony
 - Fine: up to \$10,000
 - Jail: state facility for 2 to 10 years
 - Both fine and jail
- Custody related offenses:
 - Class B misdemeanor to a 2nd degree felony

AFFIRMATIVE DEFENSE

It is an affirmative defense to prosecution if, **before** you take action that may violate an ethics provision, you rely on:

- Written opinion of an official (county or district attorney)
- Court order or opinion
- Ethics Commission Advisory Opinion

OFFICIAL IMMUNITY

- As a public official, you may attract attention resulting in a civil suit against you.
- Official immunity is a defense to liability in certain circumstances.
- Not a “get out of jail free” card – you will need to defend any suit that is filed against you.

HOW TO FIND HELP

- TAC Legal: 888-ASK-TAC4 (275-8224)
- TAC Website: county.org
- Texas Ethics Commission: (512) 463-5800
- www.ethics.state.tx.us



NOTES
