

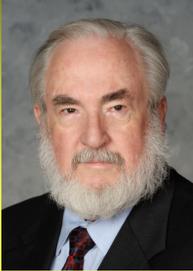
**Public Records Law  
Ethics & Civility  
Public Meetings Law**

~~~~~

**NJ League of Municipalities**

**Saturday, January 22, 2022**

1



**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**

2



**Trishka Waterbury Cecil**  
**Mason Griffin & Pierson**  
Princeton, New Jersey

Deputy General Counsel, NJ League of Municipalities  
Past President, NJ Institute of Local Government Attorneys

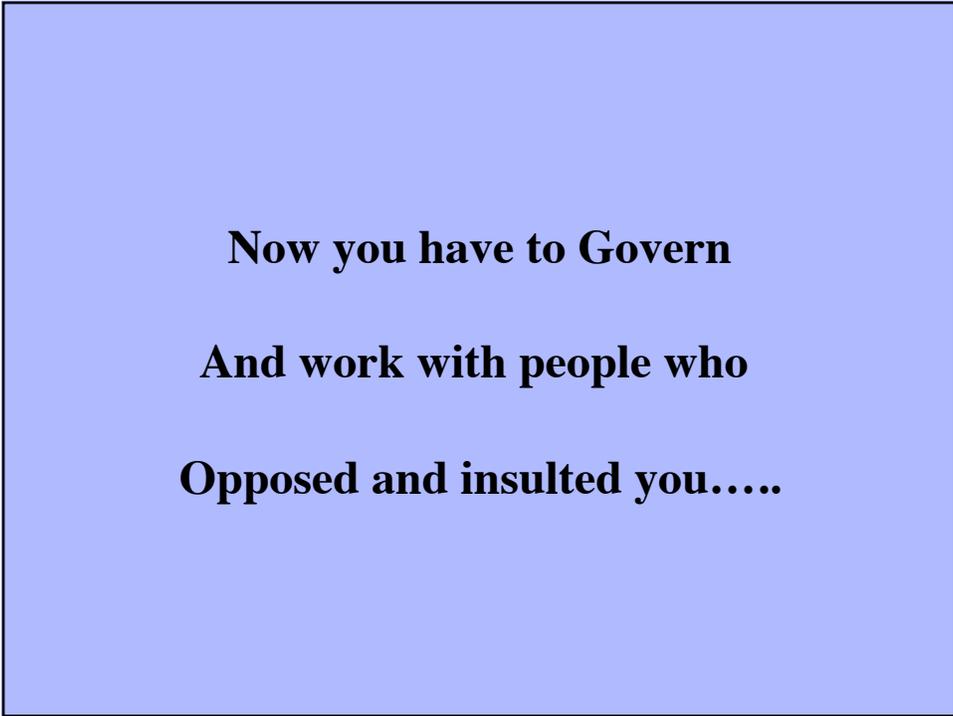
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**Congratulations**

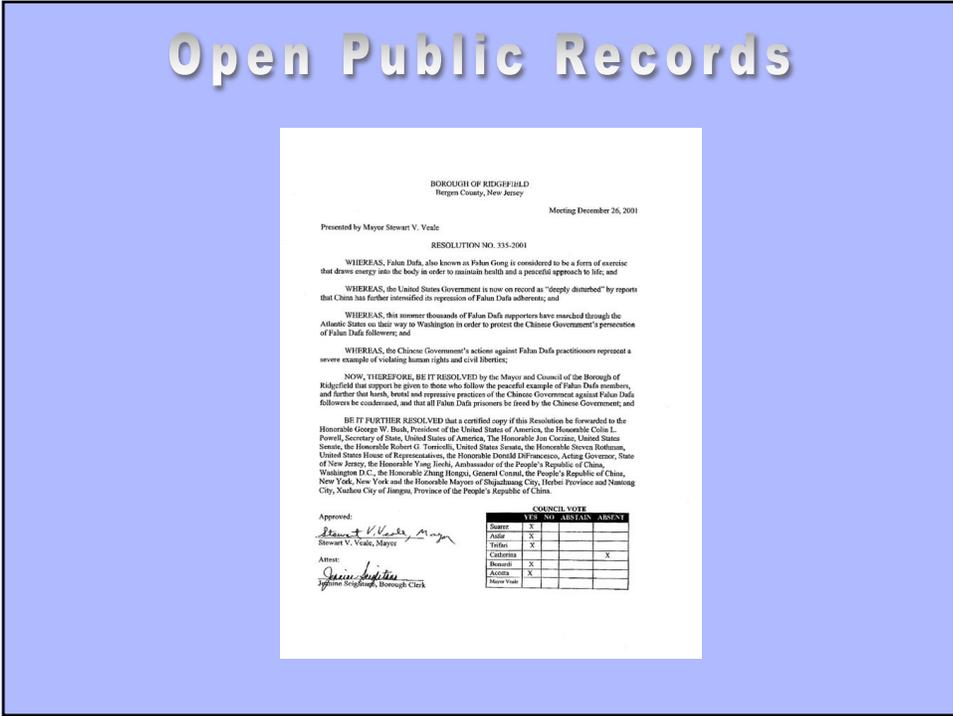
**You won the Election!**

**That was the easy part**

4



5



6

# Open Public Records

It's OPRA

**O**PEN

**P**UBLIC

**R**ECORDS

**A**CT

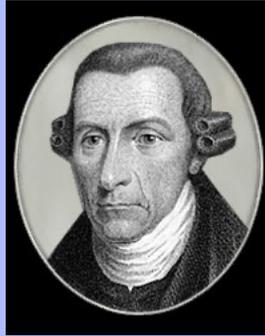
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# Open Public Records

Not ..... OPRAH



8



Patrick Henry

*"The liberties of a people never were,  
or ever will be, secure when the transactions  
of their rulers may be concealed from them."*

9

## Open Public Records

### What is a Public Record?

- If you have it, it is a public record, unless it falls under an exception.
- Agendas, Minutes, Resolutions, Ordinances, Contracts, Bid Documents, Reports, Correspondence, E-mail messages are all included.

10

## Open Public Records

### Responding to a request

- The Municipal Clerk **is** the Custodian of Records;
- Must respond within 7 days with the record or with a response that states when the record will be available;
- The Clerk can be fined for willful failure to comply with the OPRA requirements.
- **Anyone who interferes with compliance can be fined.**
- The request must identify the record requested.
- If the record does not exist, OPRA does not apply.
- There is no requirement to research or to create a record.
- **There is NO exception for records that might be embarrassing.**

11

## Open Public Records

### Responding to a request

- **A Mayor or member of the Governing Body does NOT need to submit an OPRA request in order to obtain a document.**
- **Exceptions apply – such as personnel files and medical records**
- **Supply to all.....**

12

## Open Public Records

### Record does not exist

- Requestor seeks a record that does not exist, i.e., a log of all e-mail messages between certain dates involving specific officials.
- Municipal Clerk denies the request on the grounds that no such record exists.
- Requestor sues to compel the creation of the e-mail log.
- Trial Court rules that the creation of the e-mail log would be no substantial burden to the municipality and orders that it be created
- Appellate Division reverses, holding no obligation to create a record that does not exist.
- Supreme Court says – produce the record it is not a burden

Paff v Galloway Township  
NJ Supreme Court June 30, 2017

13

## Open Public Records

### Agenda Materials

**Backup materials for the agenda (attachment reports and referenced documents) ARE Public Records and must be made available in electronic format along with the agenda in advance of the meeting.**

#### **Opderbeck v Midland Park Board of Educations**

**Backup materials for the agenda are NOT part of the agenda**

#### **APPELLATE DIVISION - August 15, 2015**

“We hold the term "agenda," as used in N.J.S.A. 10:4-8(d), does not impose a legal obligation on public bodies to provide copies of any appendices, attachments, reports, or other documents referred to in their agendas.”

14

## E-MAILS

- E-mails are public records so long as they are “made, maintained or kept on file in the course of his [or her] or its official business.” They include emails from both governmental and personal email addresses.
  - *297 Palisades Avenue Urban Renewal Company LLC v. Borough of Bogota*
    - *NJ Superior Court, Law Division, Bergen County*
      - *March 26, 2014*
        - *Hon. Peter E. Doyne, A.J.S.C.*

15

## THE PERILS OF E-MAIL

- “Time for some traffic problems in Fort Lee”  
Bridget Anne Kelly
- “Got it.”  
David Wildstein

Both emails sent from personal accounts

16

## Privacy Concerns

Data such as Social Security numbers, credit card numbers, unlisted telephone numbers and driver license numbers are generally exempt from disclosure.

(N.J.S.A. 47:1A-1.1)

Where there is a reasonable expectation of privacy of personal data given to a governmental agency, the court will perform a balancing test to determine whether the information should be released.

*Bolkin v. Borough of Fairlawn*, Docket No. BER-L-6547-12 (Law Div., Dec. 5, 2012)

17

## Open Public Records

### Settlement Agreements

#### **Confidentiality Provisions**

##### **Public right to know prevails**

*Asbury Park Press v Monmouth County*

*NJ Supreme Court, Jan 25, 2010*

##### **Counsel Fees**

*Paff v West Deptford*, App Div, Feb 18, 2010

18

## Open Public Records

### Working **WITH** the Custodian

#### Submit a request:

**Provide within 7 days all copies of ordinances, resolutions, reports, memoranda, notes, e-mail messages, relating in any way to the design, maintenance or motor vehicle accidents occurring at the intersection of Main Street and County Route 555 since January 1, 1990, including all personnel and disciplinary files related to any police officer or other public employee involved in any such accident.**

**But, be Reasonable - be more specific**

19

## Open Public Records

### Custodian Seeks Legal Advice

**It is appropriate for the custodian to seek legal advice in order to respond to a request, BUT that does not mean that the custodian does not have to respond within the 7 days. The custodian must advise the requestor that additional time is needed, and indicate how much time is required to respond to the request.**

*Richard Rader v. Township of Willingboro, GRC Complaint No. 2007-239, decided June 25, 2008*

20

# Open Public Records

## Going to Court

**Superior Court has Jurisdiction**

**BUT**

**Complaint must be filed within 45 days of the denial of access to the requested record.**

*Mason v. City of Hoboken, NJ Supreme Court, July 22 2008*

**While there is a 45 day limitation on filing in Superior Court, the Government Records Council has no such restriction. Thus, a complaint to the GRC may be filed at any time.**

*Knehr v. Township of Franklin,  
GRC Complaint No. 2012-38 (Dec. 18, 2012)*

21

# Open Public Records

## Record Retention Requirements

**NJ Division of Archives and Records Management**

[www.nj.gov/state/darm](http://www.nj.gov/state/darm)

**Municipal Agencies Records Retention Schedule**

**NJ Uniform Electronic Transactions Act (UETA)**

**Circular Letter 01-01-ST**

**E-Mail**

**Circular Letter 03-10-ST**

22

## eMail & Social Media Issues



Fun and Dangerous

23

## ELECTRONIC COMMUNICATIONS

### E-Mail Issues

- **E-Mail is a document**
- **E-Mail on public business is a public record**
- **Even on a personal computer**
- **E-Mail is really not private**
- **E-Mail is discoverable**
- **E-Mail can come back to haunt you**
- **E-Mail can be embarrassing**
- **E-Mail exchanges can be a meeting under OPMA**

24

## 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

25

## 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

26

## ELECTRONIC COMMUNICATIONS

### E-Mail Issues

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

UNINTENTIONALLY chatty – disclosing personal information ..... Yours or someone elses.

Use a telephone .

27

## ELECTRONIC COMMUNICATIONS

### Tip #1

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

28

## **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.**

29

## **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.**

30

## 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.**

31

## 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.**

32

## 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.**

33

## ELECTRONIC COMMUNICATIONS

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



34

## ELECTRONIC COMMUNICATIONS

Do you Tweet?



35

## 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.**

36

# ELECTRONIC COMMUNICATIONS



**Michigan Judge Wade McCree Jr**

37

# ELECTRONIC COMMUNICATIONS

Smart People Do Dumb Things



**Michigan Judge Wade McCree Jr**

38

# 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.**

39

# ELECTRONIC COMMUNICATIONS



40

**ELECTRONIC COMMUNICATIONS**

**facebook**

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



41

**ELECTRONIC COMMUNICATIONS**

**facebook**

+ **I have set up a personal Facebook account, on which I post information about Township issues and express my personal opinions .....**

**Can I “unfriend” those people who make offensive comments and lead the the discussions away from my positions?**

*Davison v Randall, US Court of Appeals, 4<sup>th</sup> Circuit, January 7, 2019*

42

## 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!

43

## 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)

44

## 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.”

45

## Ethics and Conflicts of Interest



46

## 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.

47



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

48

## Ethics and Conflicts of Interest

### Common Law

- Duties of the public official: to faithfully, impartially and justly perform all of the duties of the office. The official is a trustee for the town's inhabitants, and has a duty to protect the rights of those inhabitants. "Honesty and integrity in the performance of their duties is an absolute charge upon public officials and employees."
- *Driscoll v. Burlington-Bristol Bridge Co.*, 8 N.J. 433, cert. denied, 344 U.S. 838 (1952).

49

## Ethics and Conflicts of Interest

### Common Law

- The public official must place the interests of the public above all others.
- If there is a *possibility* that a personal interest might hinder the official's ability to serve the public interest above all else, the official must recuse
- What matters is not whether the official actually feels conflicted, but whether "an impartial and concerned citizen, intelligent and apprised of all the acts in the situations, feel that there was the potential for non-objectivity on the part of the officeholder making a decision"

50

## 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.

51

## Ethics and Conflicts of Interest

### Local Government Ethics Law

Who is covered:

- All elected officials
- Anyone employed by or serving on a board, commission, agency, etc. that performs functions other than of a purely advisory nature
- Anyone who is a managerial executive employee of a local government agency
- Library boards of trustees

52

## 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;

53

## 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

54

## 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

55

## 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

56

## 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

57

## 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

58

## 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

59

## 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

60

## 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

61

## Ethics and Conflicts of Interest

### Standards of Conduct

- Nothing shall prohibit any local government officer or employee, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests

62

## Ethics and Conflicts of Interest

### A Few Examples

- I have a conflict; can I still participate in the discussion as long as I don't vote?
  - NO
- I have a conflict; can I still preside over the meeting as long as I don't participate in the discussion or vote?
  - NO

63

## Ethics and Conflicts of Interest

### A Few Examples

- I have a conflict, can I stay on the dais as long as I don't preside, participate in the discussion or vote?
  - NO
- I have a conflict and I've completely recused myself, can I address the public body as a member of the public?
  - Yes, with caveats

64

## Ethics and Conflicts of Interest

### A Few Examples

- I have a conflict and I've completely recused myself, do I have to leave the room?
  - Not required under the law BUT best practice
- I have a conflict and I voted, but my vote wasn't needed and the measure would have passed anyway. Does the action stand?
  - NO—ACTION IS VOID

65

## Ethics and Conflicts of Interest

### A Few Examples

“[A]ny person who is precluded from voting in any matter because of a conflict of interests or the appearance of same should not in any way participate in any of the discussion involved in same. . . . [D]isqualification as to action is disqualification as to participation and the only sensible and sure course of action is to remove oneself totally from the proceedings as to an item in which there is a question of self-interest or the appearance thereof.” *Michael A. Pane, Local Government Law*, 34 N.J. Practice § 9:8 (4<sup>th</sup> Ed. 2015)(quoting *Darrell v. Governing Body of Clark Twp.*, 169 N.J. Super. 127 (App. Div. 1979)).

66

## Ethics and Conflicts of Interest

### Financial Disclosure

- Local government officers shall annually file a financial disclosure statement.
- Due each April 30th
- File electronically
- It is a Public Record
- [http://fds.state.nj.us/njdca\\_prod/fdssearch.aspx](http://fds.state.nj.us/njdca_prod/fdssearch.aspx)
- **Expect financial sanctions for failure to file on time.**

67

## Ethics and Conflicts of Interest

### Financial Disclosure

- Each **source** of income, earned or unearned, exceeding \$2,000
- received by the local government officer or a member of his immediate family during the preceding calendar year.
- Individual client fees, receipts or commissions received through a business organization need not be separately reported as sources of income.

68

## 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

69

## 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.

70

## 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.

71

## Ethics and Conflicts of Interest

### Criminal Code

A public servant commits a crime if:

- Under color of office and in connection with any official act ... the public servant directly or indirectly knowingly receives any benefit – whether to the public servant or another person – to influence the performance of an official duty or to commit a violation of an official duty

72

## Ethics and Conflicts of Interest

### Criminal Code

A crime of the second degree, except that if the benefit solicited, accepted or agreed to be accepted or received is of a value of \$200.00 or less, any offense .... Is a crime of the third degree.

N.J.S.A. 2C:27-10 e

So ..... the crime exists at all levels, but the potential penalty is less if the value was under \$200.00

73

## Ethical Considerations

### Situation # 1

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?

74

## Ethical Considerations

### Situation # 2

After the meeting several of the governing body members and the attorney and the engineer to 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?

75

## Ethical Considerations

### Situation # 3

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

76

## Ethical Considerations

### Situation # 4



- 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?

77

## Ethical Considerations

### Situation # 5

- 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?

78

## Ethics and Conflicts of Interest

### I'm not worried

Everybody does it .....

I won't get caught .....

The public won't pay attention .....

I'm too important to prosecute .....

It doesn't just happen to the "little guy" .....

79

## 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.

80

## 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.

81

## 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.]

82

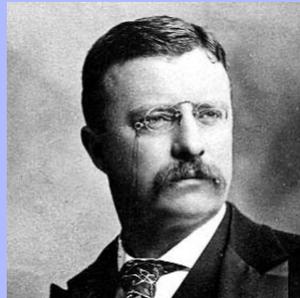
## Ethics and Conflicts of Interest

### 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.

83

## Ethics and Conflicts of Interest



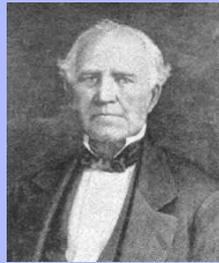
The one thing that I want to leave my children is my good name.

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

84

## 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

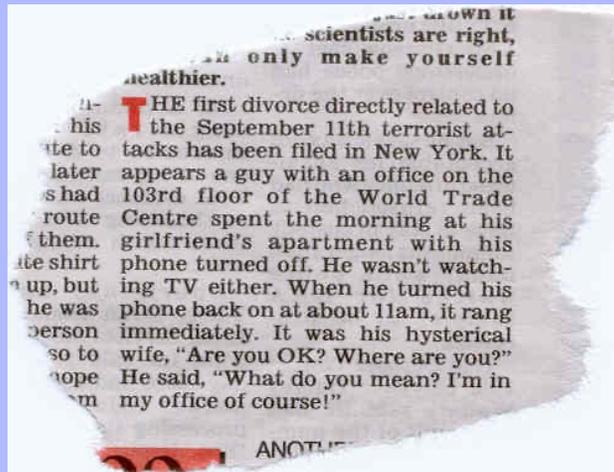
United States Senator

Governor of the State of Texas

85

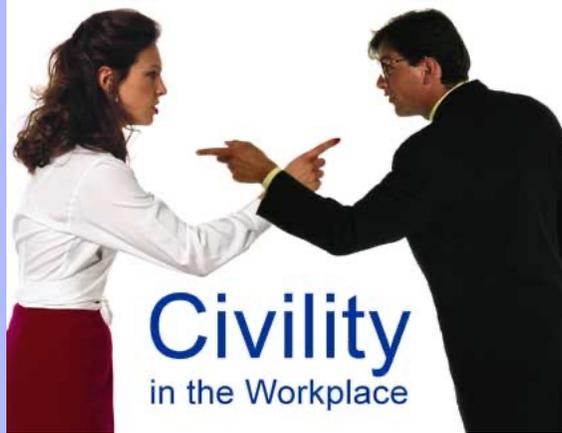
## Ethics & Personal Integrity

You will get caught!



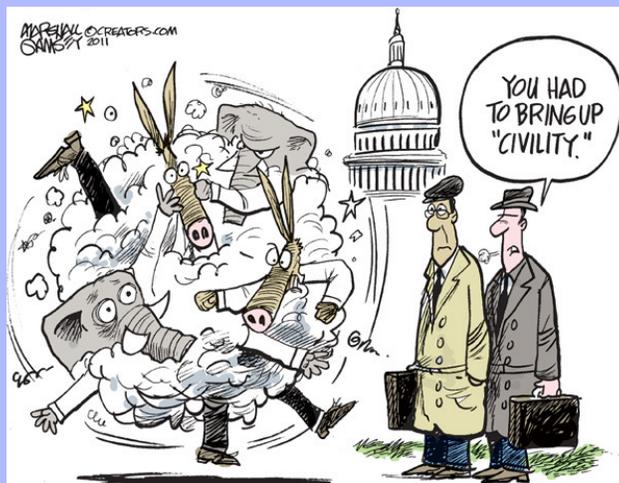
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# Choose Civility

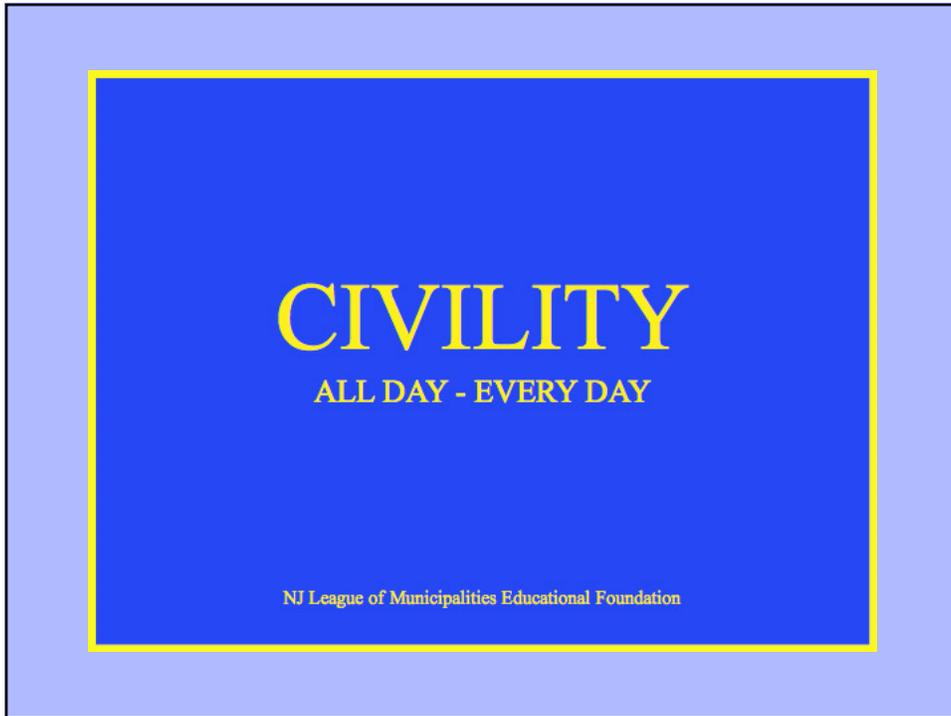


87

# Choose Civility



88



89

## Choose Civility

Civility? What's that?

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

90

## Choose Civility

### Reacting to Audience Incivility



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

91

## 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

92

# Choose Civility

## Hostility and Safety



93

# 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.

94

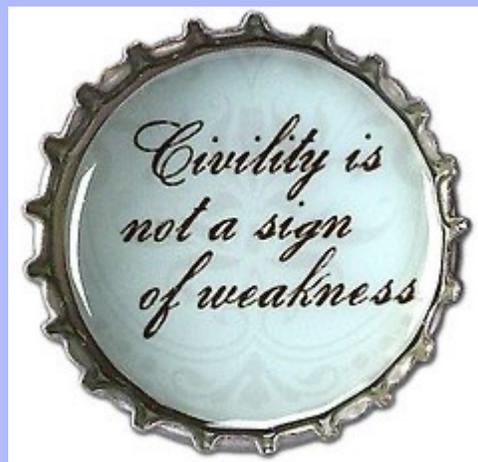
# Choose Civility

## 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.

95

# Choose Civility



96

## 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.

97

## 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.

98

## 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.

99

## 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."

100

## 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 to be published in *NJ Municipalities*, April, 2019.

101

CIVILITY  
SPOKEN HERE

ALL DAY  
EVERY DAY

102

## Open Public Meetings



Senator Byron M. Baer  
 Open Public Meetings Act  
*N.J.S.A. 10:4-6 et seq*

103

## Open Public Meetings

### What Groups are Covered

- “Public body” means a commission, authority, board, council, committee or any other group of two or more person organized under the laws of this State, and
- collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, **or**
- collectively authorized to spend public funds

104

## Open Public Meetings

### What constitutes a meeting?

- Any gathering whether corporeal or **by communication equipment**, which is
  - attended by, or open to, all of the members of a public body,
  - held with the intent to **discuss or act** as a unit on the public business of that body.
- Meeting does not mean a gathering
  - attended by less than an effective majority of the members, or
  - attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

105

## Open Public Meetings

### What constitutes a meeting?

- Telephone Conference Call
- E-Mail exchange can constitute a meeting
  - Burlington County Prosecutor to the Evesham Council
  - Sent to all municipal attorneys in the County
  - Sample policy on NJLM website
- Substance or Procedural or transmitting information

106

## Open Public Meetings

### Failure to invite some members

- It is improper to attempt to evade the requirements of the law by failing to invite some of the members to attend a meeting for the purpose of circumventing the provisions of the act.

107

## Open Public Meetings

How about a political caucus?  
What about being at the same ball game?

- “Typical partisan caucus meetings and chance encounters of members of public bodies are neither covered by the provisions of this act, nor are they intended to be so covered.”

*N.J.S.A. 10:4-7*

108

## Open Public Meetings

### Meetings of those elected, but not yet sworn in to office

- In an unpublished Appellate Division decision, it was held that meetings of council members-elect, along with one incumbent of the same political party, where they decided on appointments and notified people who were or were not going to be appointed, was not a violation of the Open Public Meetings Act. Since the newly-elected had not taken office, the letters were also held not subject to the Open Public Records Act.

*Kuehnapsel v. Chintall*, (Township of West Deptford), NJ Superior Court, Appellate Division, decided July 15, 2014

109

## Open Public Meetings

### What is “public business?”

- “Public business” means and includes all matters which relate in any way, directly or indirectly, to the performance of the public body’s functions or the conduct of its business.

110

## Open Public Meetings

### Notice Required

- Sent to newspapers
  - Not required to be advertised
  - Must be sent so that it **could be published** at least 48 hours in advance of the meeting
- Posted on the bulletin board
- Filed with the clerk
- Mailed to those who have requested it

111

## Open Public Meetings

### Public Comment

- All meetings of public bodies shall be open to the public at all times.
- Nothing limits the discretion of a public body to permit, prohibit or regulate the active participation of the public at any meeting.
- A **municipal governing body** shall be required to set aside a portion of every meeting **of the municipal governing body**, the length of the portion to be determined by the municipal governing body, for public comment on any governmental issue that a member of the public feels may be of concern to the residents of the municipality.

*N.J.S.A. 10:4-12*

112

## Open Public Meetings Videotaping



- Videotaping is permitted  
*Tarus v Borough of Pine Hill*, NJ Supreme Court, 2005
- Council may establish reasonable restrictions to prevent disruption of the meeting, but those restrictions cannot effectively prohibit the videotaping.

113

## Open Public Meetings

### Meetings Closed to the Public

- Meetings may be closed to the public only for specific matters authorized by statute.
- A **resolution** must be adopted to close the meeting to the public **specifying the reason** for the closed meeting.
- The resolution must specify when the matters may be disclosed to the public.

114

## Open Public Meetings

### Closed Meeting Reason No. 3

- To discuss any material
  - the disclosure of which constitutes an unwarranted invasion of individual privacy ...
  - educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program ... operated by a public body pertaining to any specific individual ...
  - including but not limited to information relative to the individual's personal and family circumstances, and any ...
  - admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly.

115

## Open Public Meetings

### Closed Meeting Reason No. 4

- To discuss any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body.

116

## Open Public Meetings

### Closed Meeting Reason No. 5

- To discuss any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed.

117

## Open Public Meetings

### Closed Meeting Reason No. 6

- To discuss any tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law.

118

## Open Public Meetings

### Closed Meeting Reason No. 7

- To discuss any pending or anticipated litigation or contract negotiation *other than a collective bargaining agreement* in which the public body is, or may become a party and any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.

119

## Open Public Meetings

### Closed Meeting Reason No. 8

- To discuss any matter involving the
  - employment, appointment, termination of employment, terms and conditions of employment,
  - evaluation of the performance of, promotion or
  - disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body,
  - unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.

120

## Open Public Meetings

### Closed Meeting Reason No. 9

- To discuss any deliberations of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act or omission for which the responding party bears responsibility.

121

## Open Public Meetings

### Minutes

- A public body is required to keep minutes of all meetings
- Reasonably comprehensible
- Showing the time and place, the members present the subjects considered, the actions taken, the vote of each member,
- **Promptly** available to the public to the extent that making such matters public shall not be inconsistent with the act.

122

## Open Public Meetings

### Minutes

- What does “Promptly” available mean??
- Developing case law in holds that minutes must be available within 30 days or by the next meeting **whichever shall first occur.**
  - *Paff v Keyport Borough Council*,  
New Jersey Superior Court, Law Division,  
Monmouth County. Decided December 8, 2008.

123

## Open Public Records

### What is **Not** a Public Record?

Draft documents, drafts of minutes

- *Parave-Fogg v Lower Alloways Creek Township*, Government Records Council, 2006, holding that minutes are advisory, consultative or deliberative material until approved.
- **BUT note: *Paff v Moorestown*, filed February 9, 2016, over unapproved minutes from a meeting of the local ethics board held on October 19, 2012. The Board only meets as needed and had not met even to approve minutes.**

124

## Open Public Meetings

### Can a member be excluded?

- A member of the public body who has brought the litigation against the public body may not participate in the closed session where the litigation and claim are to be discussed.

*Scotch Plains-Fanwood Board of Education v. Syvertsen*,  
251 N.J. Super. 566 (App. Div. 1991)

125

## 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.”

126

??? Questions ???

