

**Ethical Public Service:
Beyond the State Ethics Act**

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DEFINING ETHICS:

A system of principles of conduct based on both articulated standards and moral values that combine to guide responsible decision making.

THE LAW OF PUBLIC SERVICE:

SC Ethics, Government Accountability, and Campaign Reform Act

“The trust of the public is essential for government to function effectively. Public policy developed by elected officials affects every citizen of the State, and it must be based on honest and fair deliberations and decisions. This process must be free from all threats, favoritism, undue influence, and all forms of impropriety so that the confidence of the public is not eroded.”

State Ethics Commission Resources: www.ethics.sc.gov

Code of Conduct
Advisory Opinions

SOME ETHICAL CHALLENGES FOR PUBLIC SERVANTS:

Confidentiality
Conflicts of Interest
Notarizing & Witnessing
Civility & Professionalism
Unauthorized Practice of Law

CONFIDENTIALITY

State Ethics Code:

A public official may not use or disclose confidential information gained in the course of employment in a way that would affect an economic interest of the official, a member of the official's immediate family, an individual or a business with which the official is associated.

A public official may not examine a record in connection with health or medical treatment, social services records, or other records of an individual that are in the

possession of a public agency if the purpose of the examination is improper or unlawful.

A person convicted of violating this subsection must be fined not more than \$5,000.00 or imprisoned not more than five years, or both, and shall reimburse the costs of prosecution.

CONFLICTS OF INTEREST

State Ethics Code Prohibits:

Using position to influence decisions to obtain economic interest (for you, your family or business).
Accepting anything of value to influence decisions.
Accepting anything of value for public speaking.
Accepting agency money other than paycheck for advice or assistance.
Conflicts of Interest
Advancing the employment of family member as a subordinate.
Participating in discipline of family member employee.

NOTARIZING & WITNESSING

Resources for Notaries: www.sos.sc.gov

- ✓ Notary Statute
- ✓ Downloadable Notary Manual
- ✓ Webinars & Other Educational Programs
- ✓ Notary Forms

CIVILITY & PROFESSIONALISM

Respect, courtesy, and dignity.
Fairness, integrity, and equality.
...regardless of circumstances.

UNAUTHORIZED PRACTICE OF LAW

UPL Regulation & Public Policy

“The state prohibits the unauthorized practice of law not for the economic protection of the legal profession, but rather to protect the public from the consequences of erroneous advice from those untrained in the law.”
State vs. Buyers Service Company, Inc., 292 SC 426 (1987)

“The goal of the prohibition against the unauthorized practice of law is to protect the public from incompetent, unethical, or irresponsible representation.”
Renaissance Enter., Inc. v. Summit Teleservices, Inc., 334 SC 649 (S.C. 1999)

UPL Regulation by Statute:

S.C. Code Ann. § 40-5-310

No person may practice law or solicit the legal cause of another person or entity unless:

- enrolled as a member of the SC Bar or
- otherwise authorized to perform certain legal activities by the Supreme Court.

Violation this section is a felony:

- Fine: not more than \$5,000, or
- Prison: not more than five years, or both.
- This penalty applies per offense.

UPL Regulation by the Court:

S.C. Code Ann. § 40-5-310 does not define the practice of law or set out a list of activities that constitute UPL.

Before the state can bring criminal charges, the activity must have been defined as the unauthorized practice of law by the Supreme Court.

“It is neither practicable nor wise to attempt a comprehensive definition by way of a set of rules. The better course is to decide what is and what is not the unauthorized practice of law in the context of an actual case or controversy.”

In re UPL Rules (1992)

The Supreme Court decides on a case-by-case basis whether certain activity is considered UPL. Therefore, we look to Supreme Court case law to find what activities are prohibited for nonlawyers.

It is the unauthorized practice of law for a nonlawyer to:

- Prepare / file legal documents without review by a lawyer.
- Give legal advice or answer legal questions.
- Appear in court on behalf of someone else.
- Perform a real estate or mortgage closing.
- Prepare title documents, wills, powers of attorney, etc.

Duties of Public Servants in Leadership Roles

(from: Edwin C. Thomas, M.Ed., MPA, of Ed Thomas/Leadership, LLC)

The Duty of Care:

Showing Up

Being prepared: Doing Homework and Research

Exercising Independent Judgment

Ensuring Competence and Diligence

Reviewing Organizational Finances and Policies

Ensuring Legal and Ethical Compliance

The Duty of Loyalty:

- Disclosing Conflicts of Interest
- Adhering to Conflict of Interest Policy
- Avoiding Personal Gain
- Not Disclosing Confidential Information
- Acting in the Best Interests of the Agency

The Duty of Compliance:

- Complying with all regulatory and reporting requirements.
- Examining all agency processes critically and intentionally.
- Making decisions that fall within the scope of the mission and governing law.
- Ensuring the compliance of subordinates and superiors.

Public Service Values

(from: Edwin C. Thomas, M.Ed., MPA, of Ed Thomas/Leadership, LLC)

Complying with the Law is Not the Same Thing as Conducting Yourself Ethically...

“One can be dishonest, unprincipled, untrustworthy, unfair, and uncaring without breaking the law. Ethical persons measure their conduct by basic ethical principles rather than by laws and rules; they do not walk the line of propriety; they do more than they have to and less than they are allowed to.” – Michael Josephson

What is Right is Determined by Your Responsibility...

- To the public
- To the individual citizen
- To the agency
- To your profession
- To your subordinates
- To yourself

But not to political interests...

Prof. Josephson's Five Principles of Public Service Ethics:

1. A public office is a public trust.
2. Accountability.
3. Independent objective judgment.
4. Respectability and fitness for office.
5. Democratic leadership.

A Public Servant's Personal Code of Ethics:

- ✓ Selflessness.

- ✓ Integrity.
- ✓ Objectivity.
- ✓ Honesty.
- ✓ Accountability.
- ✓ Leadership.

Creating an Ethical Organizational Culture

(from: Edwin C. Thomas, M.Ed., MPA, of Ed Thomas/Leadership, LLC)

Strategies for Creating an Ethical Organizational Culture:

1. Lead by Example.
2. Articulate Organizational Values.
3. Prominently Display Statements of Values & Standards.
4. Adopt Appropriate Checks and Balances.
5. Hire Based on Character.
6. Talk About Ethics.
7. Form an Ethics Committee.
8. Mandate Periodic Ethics Training.
9. Enable and Encourage Reporting of Concerns.
10. Conduct an Ethics Audit.

When a comprehensive ethics program is in place, employees:

- ✓ are willing to seek ethics advice.
- ✓ receive positive feedback for ethical conduct.
- ✓ feel prepared to handle situations that invite misconduct.
- ✓ feel they can seek clarification of management decisions without fear.
- ✓ are rewarded for following ethical standards.
- ✓ are not rewarded for achieving success through questionable means.
- ✓ feel positive about the organization's efforts to encourage ethical conduct.
- ✓ feel that their organization is an ethical workplace.

REMEMBER: Ethical persons do more than they have to and less than they are allowed to.