Ethics for Legislative Lawyers

Bruce Feustel
National Conference of State Legislatures
Columbus, Ohio
September 11, 2008
Legislative Lawyer Ethics

Purpose

- Better understand how colleagues perceive, analyze and respond to ethical challenges
- Examine some resources and frameworks to help you make ethical decisions
- Challenge your own assumptions and practices
Legislative Lawyer Ethics

Overview

- Ethical issues come without warning
- Typical areas of ethical tension
- Guidelines and people to help you
- Case studies to prepare you
- Awareness before consistency
Legislative Lawyer Ethics

Themes from you---what’s important

- Keep your eye on the big picture---what helps the legislative process and institution
- Be stridently nonpartisan
- Zealously work for each legislator
- Use common sense and experience
Legislative Lawyer Ethics

Themes from you---what’s important

☒ Keep your eye on the big picture---what helps the legislative process and institution [but who decides what is best for the institution?]

☒ Be stridently nonpartisan [but aren’t legislators pushing for something more?]

☒ Zealously work for each legislator [but what happens when their interests differ?]

☒ Use common sense and experience [but what if you’re new or stuck in a rut?]
Legislative Lawyer Ethics

Ethical issues come without warning

- Work in political world but must be neutral
- Working in committees
- Answering question on tight time frames
- Multiple tasks
- Working with the media
- Conflicts between good principles/goals
Typical areas of tension

- Who is the client: legislator or legislature?
- What does confidentiality really mean?
- Where do my loyalties lie?
- Do it right or do it quick?
- Do I provide the same level of service to each legislator and for each issue?
Legislative Lawyer Ethics

Typical areas of tension

- Do you be quiet or speak up?
- What’s your opinion?
- Do you change your draft or other work product?
- What is your province and what is the legislator’s?
- What may you accept from lobbyists or others in the legislative arena?
- What are my personal beliefs?
What helps?

Help through ethical challenges

- Learn on the job
- Advice from supervisors and colleagues
- Plan for typical tension areas
- Legal requirements, rules and agency policies
- Applicable codes of conduct
- Personal values and beliefs
Values

- What are your professional core values?
- Ideals, principles or teachings that inspire us
- Provide security for those who work and those who are served
- Individuals & organizations more effective when guided by their principles
Staff Perspective

Model Code of Conduct for Legislative Staff

- Basic guidelines
  - Public servant - assist state legislature
  - Loyalty to legislative branch
  - Duty to act in a way that makes staff person worthy of trust and confidence
Legislative Staff Ethics

- Model Code of Conduct for Legislative Staff
- Duties to legislators, other staff and the public
  - Honest, discreet and candid
  - Objective, competent, diligent and fair
  - Respectful and supportive
  - Courteous and law-abiding
Honest

- Maintain high standard of honesty
- No - property for personal use
- No - employment for personal gain
- Give full effort for pay received
- Tell the truth
- Be honest in all aspects of life
Discreet

- In what you reveal about work
- Maintain confidentiality
- Balance confidentiality with need, at times, to reveal some information
- Know when to inform leaders of certain information
Candid

- Provide candid advice
- Fully share your knowledge
- Help legislators make good decisions
- May have to be candid even when you are not asked for input
Objective

- Provide objective advice, information and alternatives to legislators
- Provide advice independent of personal beliefs or interests
- Avoid activities that conflict with objectivity or the appearance of objectivity
Competent

- Acquire and maintain necessary knowledge and skills
- Recognize when you need help from others
- Be honest about extent of your expertise
- Continue to learn
Diligent

కGive a hard-working effort on each task
కUse time productively and efficiently
కComplete work in a timely fashion
కInform legislators of reasonable expectations
**Fair**

- Treat all legislators with equal respect
- Provide equal quality work for all legislators to whom responsible
- Don’t diminish effort because of legislator’s political or religious beliefs, race, etc.
Respect

- Treat all colleagues with respect
- Understand the pressures of their work and difficulties of their obligations
- Practice consideration
Supportive

- Support the efforts of fellow staff members
- Be willing to work as part of a team
- Don’t seek to harm another’s reputation even when working opposites sides of an issue
**Courtesy**

- Treat members of the public with courtesy
- Respect the need for those outside the legislature to have information
- Provide help even when you don’t have information they are seeking
Law abiding

- Obey the law
- Encourage lawfulness in the legislative process
- Pursue appropriate channels if you have knowledge of unlawful activities
Values

- What are your professional core values?
- Ideals, principles or teachings that inspire us
- Provide security for those who work and those who are served
- Individuals & organizations are more effective when guided by their principles
Legal and Regulatory Requirements:

- Laws
- Legislative rules
- Supreme Court or other attorney conduct rules
- Bill drafting manuals
- Agency personnel manuals and memoranda
- Oral directives from your superiors
Legal Requirements:

Wisconsin Example: SCR 20

- Confidentiality
- Conflicts of interest
- Organization as client
Confidentiality: SCR 20:1.6

Don’t reveal information relating to the representation, unless/except:

- Informed consent
- Implicit to representation
- Reasonably necessary to prevent certain types of harm
Conflicts of interest...: SCR 20:1.7

- Don’t represent a client if it involves concurrent conflict of interest
- Conflict exists if representation of one client is directly adverse to another
Organization as Client: SCR 20:1.13

• Lawyer employed by organization represents organization through its constituents

• Guideline of “best interest of the organization”
Help through ethical challenges

- Learn on the job
- Advice from supervisors and colleagues
- Plan for typical tension areas
- Legal requirements, rules and agency policies
- Applicable codes of conduct
- Personal and professional values and beliefs
Consistency?

- What are we looking for here?
- Your own perceptions of one another, note the different points of emphasis
- Strike zone analogy
- Bill drafting analogy
- Mix of uniformity and individual application