



The Unique Ethical and Professional Relationship Between Local Government Attorneys, Clients and the Public

Lynn Hoshihara, Okaloosa County Attorney

Introduction



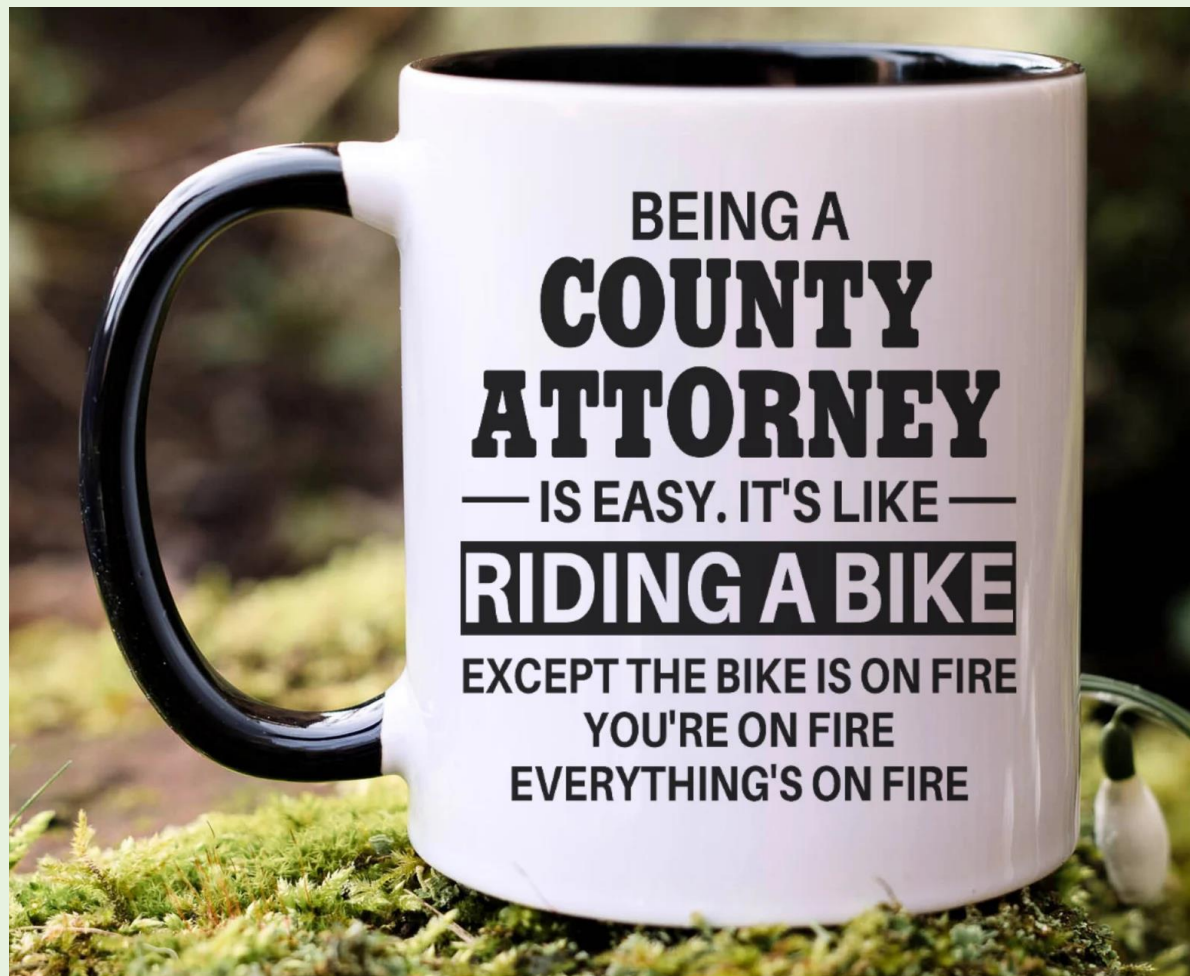
Current Okaloosa County Attorney

Former Walton County Attorney

Roles of a Government Attorney



- Advisor
- Advocate
- Negotiator
- Evaluator
- Counselor

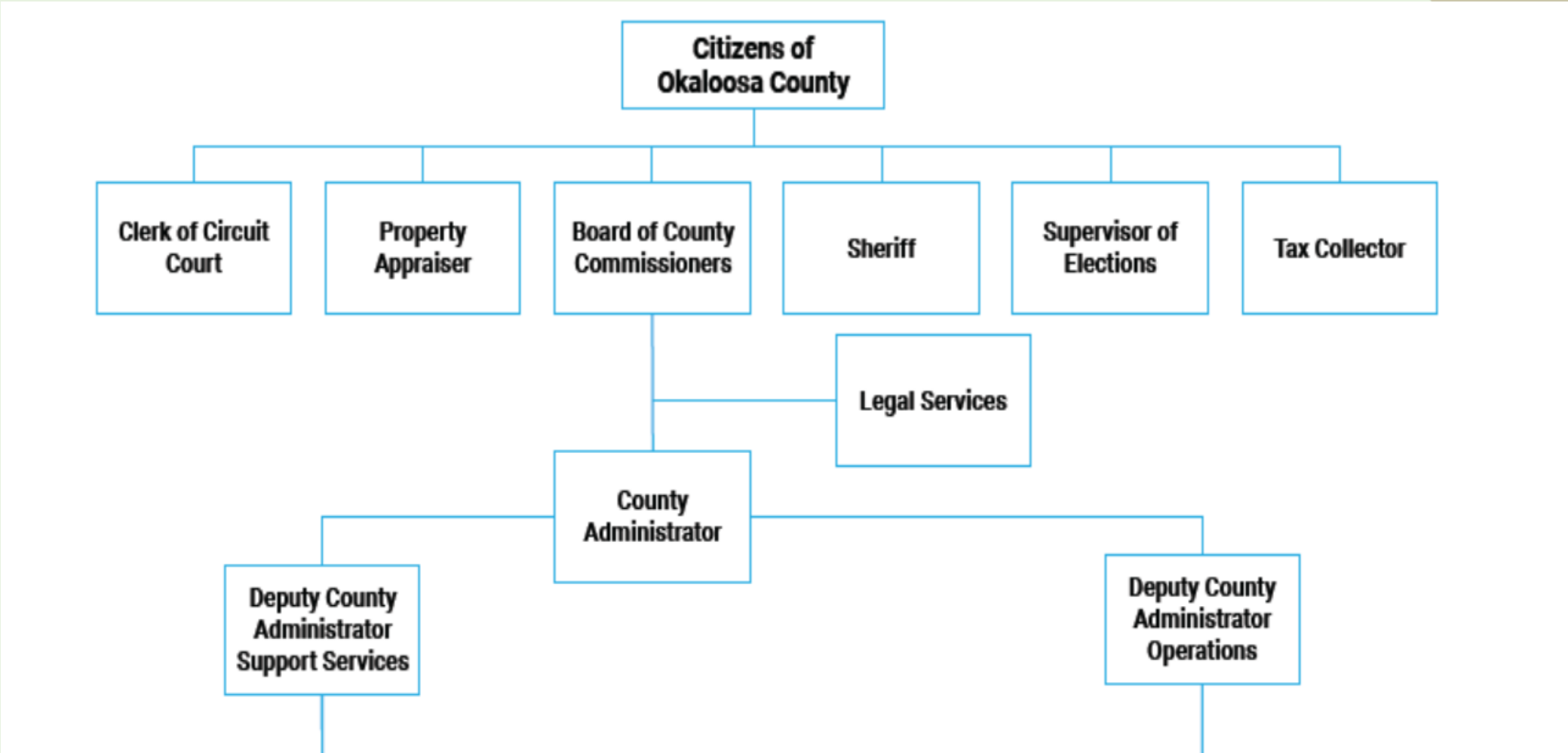


Who is the Client?



- The County/City
- County Commission/City Council
- Individual County/City Commissioners
- Department Heads/Staff
- Taxpayers

Organizational Chart



Legal Authority



- Florida Bar Rules and Opinions
- Florida Statutes
- Case Law
- Charter, Ordinance, Policies, etc.
- Contract

Objective and Scope of Representation

Florida Bar Rule 4-1.2



(c) Limitation of Objectives and Scope of Representation. If not prohibited by law/rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing,

Conflict of Interest

Florida Bar Rule 4-1.7

(a) Representing Adverse Interests. A lawyer must not represent a client if:

- (1) the representation of 1 client will be directly adverse to another client; or
- (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, former client, third party or personal interest

Conflict of Interest

Florida Bar Rule 4-1.7

(b) Informed Consent. A lawyer may represent a client if:

- (1) Lawyer can provide competent/diligent representation to each affected client;
- (2) Not prohibited by law;
- (3) Does not involve the assertion of a position adverse to another client when representing both clients in same proceeding before tribunal;
- (4) Each client gives informed consent in writing

Florida Bar Ethics Opinion 77-30

September 29, 2006

- Some conflicts involving the representation of individual county commissioners may be waived by both the individual commissioner and the county.
- For example, if a frivolous ethics complaint is filed against a commissioner and the county attorney can readily determine the allegations are unfounded, the county attorney may represent the commissioner if the commissioner and county give informed written consent.

Communication with Person Represented by Counsel Florida Bar Rule 4-4.2



- a) In representing a client, a lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.

Florida Bar Ethics Opinion 09-01



A lawyer may not communicate with officers, directors, or managers of State Agency, or State Agency employees who are directly involved in the matter, and other State Agency employees whose acts or omissions in connection with the matter can be imputed to State Agency about the subject matter of a specific controversy unless the agency's lawyer first consents to such communication.

Lawsuits against Public Officers/Employees

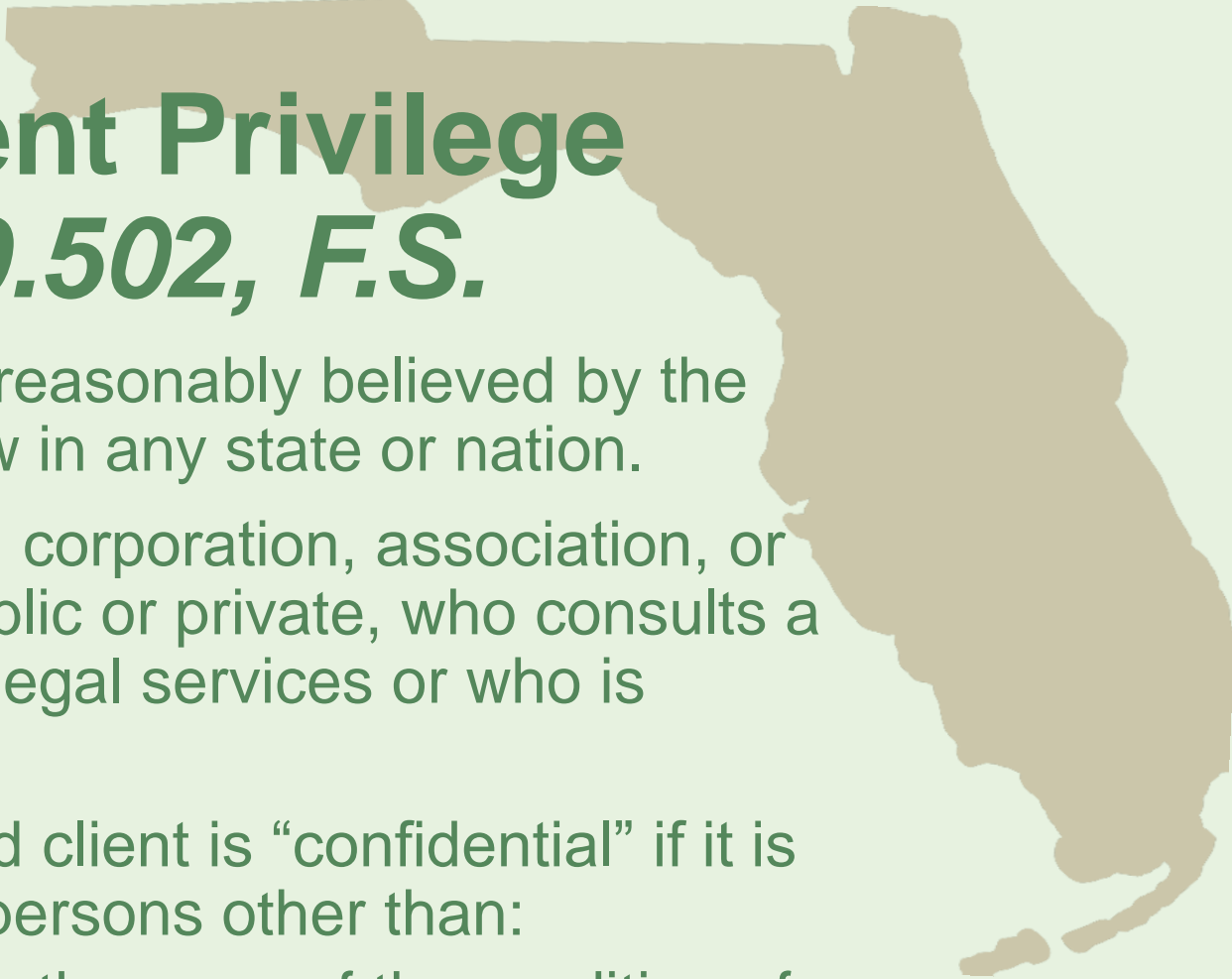
Section 111.07, F.S.

Defense of civil actions against public officers, employees or agents

Local governments are authorized to provide an attorney to defend any civil action arising as a result of any act/omission of its officers, employees, or agents acting in the scope of their employment.

Attorney-Client Privilege

Section 90.502, F.S.



- a) A “lawyer” is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.
- b) A “client” is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer.
- c) A communication between lawyer and client is “confidential” if it is not intended to be disclosed to third persons other than:
 - 1) Those to whom disclosure is in furtherance of the rendition of legal services to the client.
 - 2) Those reasonably necessary for the transmission of the communication.

Florida Bar Rule 4-1.13

Organization as Client

- a) **Representation of Organization.** Represents the organization acting through its duly authorized constituents.

- b) **Violations by Officers/Employees.** If an employee is engaged in action that is a violation of a legal obligation to the organization or violation of law, you shall proceed as is necessary in the best interest of the organization.

Florida Bar Rule 4-1.13

Organization as Client

- d) **Identification of Client.** Must explain the identity of the client when you know that the organization's interests are adverse to those of the constituents you are dealing with.
- e) **Representing Directors, Officers, Employees, etc.** May also represent these individuals subject to any conflict of interest rules.

The intricacies of attorney-client privilege are funny. But not "ha-ha" funny. More "psych, you're not protected" funny.



Limitations to Attorney-Client Privilege



- Sunshine Law
- Public Records Act

Shade Meetings

Section 286.011(8), F.S.

Board/Council and Chief Administrative/
Executive Officer may meet in private with the
government attorney to discuss pending
litigation upon certain conditions being met.

Shade Meeting exemption is construed narrowly and strictly

- Zorc v. City of Vero Beach, 722 So. 2d 891 (Fla. 5th DCA 1998) (because attendance of city clerk and department directors was not expressly authorized by statute, the shade session violated the Sunshine Law)
- City of Dunnellon v. Aran, 662 So. 2d 1026 (Fla. 5th DCA 1995) (failure to disclose names of city and outside attorneys violates the Sunshine Law)

Work Product Privilege and Public Records Act *Section 119.071(1)(d), F.S.*

A public record prepared by a government attorney or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or government, that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or prepared in anticipation of such, is exempt until conclusion of the litigation or proceeding.



Additional Thoughts?

Practice Tips?

Questions?

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