

OFFICE OF CAPITAL AND FORENSIC WRITS ETHICS AND CONDUCT POLICY

1. Overview

The purpose of this policy is to describe the standards of conduct for all Office of Capital and Forensic Writs employees. The policy restates constitutional, statutory, and common-law principles of ethical conduct, and adopts some stricter standards to guide agency employees in the conduct of agency business. All OCFW employees must familiarize themselves with this ethics policy, and must abide by all applicable federal and Texas laws, administrative rules, and OCFW conduct policies, including this ethics policy. Employees are encouraged to contact the Senior Accountant or Director with any questions or concerns about matters addressed in this policy.

Employees should report violations of this policy to their supervisor, human resources or the Director. The report may be oral or written and may be anonymous. (Reports of fraud should be reported to OCFW's Senior Accountant – see Section 12 of this policy). OCFW shall not retaliate nor permit retaliation against any employee who makes a good faith report of a violation of this policy, including a report of known, suspected or alleged fraud. A violation of this policy may result in discipline, up to and including termination.

2. Definitions

"Agency" or "OCFW" means the Office of Capital and Forensic Writs of the Judicial System of Texas.

"Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage to the beneficiary or to any other person in whose welfare the beneficiary has a direct and substantial interest, including meals, transportation, and lodging.

"Contract" includes all contracts and amendments to contracts such as depository contracts; interagency and interlocal contracts; contracts for goods and services, consultant services, professional services, and utility services; and requests for lease and leases for office space.

"Employee" means an employee of OCFW.

"Employment contract" includes a personal services contract, but does not apply to an at-will employment relationship that involves the traditional relationship of employer and employee.

3. Standards of Conduct

An OCFW employee shall not:

- a. Accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties or that the employee knows or should know is being offered with the intent to influence the employee's official conduct;
- b. Disclose confidential information, information that is excepted from public disclosure under Rule 12 of the Rules of Judicial Administration (or the Public Information Act), information that has been ordered sealed by a court, confidential information relating

to a client obtained in the course of representation, or information from a court that has been obtained by virtue of the employee's position with the agency and that has not been released to the public by the court;

- c. Accept other employment, including self-employment, or engage in business, charitable or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information, information that is exempted from public disclosure under Rule 12 of the Rules of Judicial Administration, information that has been ordered sealed by a court, or information from a court that has been obtained by virtue of the employee's position with the agency and that has not been released to the public by the court;
- d. Accept other employment, including self-employment, or compensation or engage in a business, charitable or professional activity that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties;
- e. Make a personal investment, or have a personal or financial interest, that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest;
- f. Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the employee's official powers or performed the employee's official duties in favor of another;
- g. Knowingly make misleading statements or provide false information via any mode of communication, in the course of official state business;
- h. Use or invoke the employee's official position or employment with the state to attempt to obtain privileges, receive benefits, or avoid the consequences of illegal acts; or
- i. Make statements, via any mode of communication, purportedly on behalf of the agency but outside of his or her official capacity.

4. Equal Opportunity Employment

The Office of Capital and Forensic Writs (OCFW) upholds equal employment opportunity for all employees and applicants for employment, regardless of their race, color, religion, national origin, sex, age, disability, pregnancy, genetic information, sexual orientation, gender identity, or status as a protected veteran. Discrimination will not be tolerated at OCFW.

5. Sexual Harassment and Sexual Misconduct

OCFW does not tolerate the harassment of any employee by any other employee or supervisor for any reason. Sexual harassment, a type of harassment and unlawful discrimination is defined under the law as:

- a. Unwelcome sexual advances, requests for sexual favors, or any other verbal or physical conduct of a sexual nature when (1) submission to the conduct is made either implicitly or explicitly a condition of the individual's employment, or (2) submission to or rejection of

the conduct is used as the basis for an employment decision affecting the harassed employee; or

- b. Harassment that has the purpose or effect of unreasonably interfering with the employee's work performance or creating an environment which is intimidating, hostile, or offensive to the employee.

Sexually-oriented jokes, remarks, gestures, or pictures in the workplace do not necessarily mean that sexual harassment has occurred. Nevertheless, such conduct is often offensive to other employees, and is thus prohibited by OCFW. Engaging in such conduct may subject employees to appropriate disciplinary action.

If an employee believes that he or she has been or may be subjected to sexual harassment in the workplace, or an employee becomes aware of such conduct, they should contact their supervisor or OCFW's human resources director. Any employee who becomes aware of any such conduct by any employee, supervisor, or manager should immediately advise his or her supervisor or the human resources director. Additional information regarding reporting sexual harassment and OCFW's handling of complaints is available in OCFW's Harassment Prevention Policy.

6. Acceptance of Benefits

- A. An OCFW employee may not solicit, accept, or agree to accept any benefit in exchange for any exercise of official discretion.
- B. An OCFW employee may not accept anything of value not authorized by law for services rendered as an OCFW employee. *See* Tex. Govt. Code sec. 78.053
- C. An OCFW employee may not solicit or accept, on behalf of any person, a benefit from a person who the employee knows or should know is:
 - 1. Interested in a contract, purchase, claim, or other pecuniary transaction that may be substantially affected by the performance or nonperformance of the employee's official duties; or
 - 2. Subject to investigation by OCFW.
- D. An OCFW employee may accept a benefit in a situation described by Section 6.C. above if the gift does not raise the appearance of impropriety and if the benefit is:
 - 1. A non-cash item or items of less than \$50 in value;
 - 2. Food, lodging, transportation, or entertainment in any amount so long as the recipient is a guest at a meal or event at which the host also is present;
 - 3. From a person such as a friend, relative, or business associate with whom the employee has a relationship independent of his or her official status if the benefit is given on account of that relationship rather than the official status; or
 - 4. A fee, payment, or other benefit for which the employee has given legitimate consideration reflecting the actual value of the goods or services and in a capacity other than as a public servant.

- E. An OCFW employee may not solicit, accept, or agree to accept an honorarium (such as a speaker's fee) in consideration for services that the employee would not have been requested to provide but for the employee's official position. An OCFW employee may not accept money for a travel expense reimbursement from a person that the agency or OCFW-affiliated agency intends to audit, examine, or investigate or is auditing, examining, or investigating. An OCFW employee may accept food, transportation, and lodging in connection with a conference or similar event in which the employee renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory.

7. Gifts to OCFW

A gift to OCFW can be accepted only if it can be used in carrying out the agency's powers and duties. A gift to the agency becomes state property, and an officer or employee of the agency is not permitted to use it for private purposes. Even legally permissible gifts may raise questions about impropriety; such questionable gifts either should be refused or should be donated to a tax-exempt charitable organization.

8. Use and Misuse of Government Property

A. General policy. Generally, State resources are to be used for State purposes, not private purposes. However, there are circumstances in which the incidental use of State property for personal purposes is allowed, when the use (1) does not result in direct cost to the State or the agency, (2) does not impede agency functions, (3) is not attributable to private commercial or business purposes, and (4) is limited to incidental amounts of employee time (comparable to brief coffee breaks during the day) that do not interfere with normal performance of an employee's work duties.

B. Telephones and fax machines. Agency telephones and fax machines should never be used for an employee's pecuniary benefit. Employees may make brief personal telephone calls and occasionally send and receive brief personal faxes so long as the calls and faxes do not impede the conduct of state business and do not incur charges to the agency. To limit printing costs, received personal faxes may not exceed a few pages on infrequent occasions. Because the agency incurs costs for long-distance calls on a per-call basis on regular agency lines and on an amount-of-use basis on the agency's "toll-free" line, employees must use a personal calling card or personal mobile phone for personal long-distance calls and faxes. An employee who violates this policy inadvertently or in an emergency must immediately contact the agency's accountant or purchaser to arrange reimbursement. OCFW management occasionally will research the source of various calls that have incurred costs to the agency to determine if employees have violated this telephone and fax policy.

C. Online Communications and Internet use.

1. **General policy.** Although online communications and the Internet generally should be used only for legitimate state business, brief and occasional messages of a personal nature may be sent and received and the Internet may be used briefly and occasionally for personal reasons if the guidelines in this policy are met.
2. **Prohibited use.** Neither online communications nor the Internet may be used as follows:

- a. For accessing, posting, sharing, saving, sending, or receiving any objectionable or offensive material, including but not limited to material that is racist, sexist, threatening, sexually explicit, or obscene;
 - b. To disable, impair, or overload the performance of any computer system or network, or to circumvent any system intended to protect the privacy or security of another user;
 - c. For pecuniary benefit;
 - d. For political activities or purposes or to promote establishment of a religion;
 - e. For gambling or gaming;
 - f. For any use that causes an excessive burden on the agency's e-mail or Internet system.
3. **No privacy interest.** All e-mail and Internet use records may be recorded and stored along with the source and destination, and agency management has the ability and right to view employees' e-mail and Internet records. Recorded e-mail messages and Internet use records are the property of OCFW and the State of Texas. Thus, they may be subject to the requirements of Rule 12 of the Rules of Judicial Administration and the laws applicable to State records retention.

D. Printing and Copying. Printing or copying of personal documents shall not exceed a few pages on infrequent occasions.

E. Travel awards.

Air travel awards, such as frequent flyer miles that are credited directly to the traveler and not to the agency may be used by the employee for business or personal purposes.

Rental car travel awards, such as frequent car rental points, are credited back to the agency (OCFW) and, therefore, are not available to employees for personal purposes. These credits will be redeemed for future car rentals secured directly by OCFW.

Hotel or food discounts offered to an employee in the course of business travel should be used to defer the cost of the current travel. If that is not possible because the discounts are for future use, then the employee may use the discounts for business or personal purposes. Ride-share discount cards reimbursed with state funds may also be used for future business or personal purposes.

7. Political Activity.

An OCFW employee may not use appropriated funds for influencing the outcome of any election, or the passage or defeat of any legislative measure (this does not prohibit testifying before or providing information to the Legislature as an invited resource witness). Similarly, an OCFW employee may not use state time or state equipment to work on any individual's political campaign or to distribute political advertising.

8. Misuse of Official Information

- A. An OCFW employee may not use agency or court non-public information to acquire or help another person to acquire a pecuniary benefit in any property, transaction, or enterprise affected by the information.
- B. An OCFW employee may not speculate or aid another to speculate on the basis of agency or court non-public information.
- C. An OCFW employee may not disclose or use the non-public information with the intent to obtain a benefit or to harm another.

9. Records Retention

OCFW employees are required to maintain all records created in the performance of their job consistent with the retention requirements in OCFW's Records Retention Schedule. Records should not be destroyed without the approval of an employee's supervisor and OCFW's records manager. All contract solicitation documents and related contracts may not be destroyed until after the prescribed period. In some instances, such as in the event of a contract dispute or potential or actual litigation, records may be required to be maintained for a period longer than that prescribed in OCFW's Records Retention Schedule. OCFW's director will notify employees in the event a longer retention period is required.

10. Outside Employment

- A. Definitions.** The term "outside employment" applies to the engagement of OCFW employees in activities outside the agency for financial return or for compensation of any kind, including business or professional activities or employment in private enterprises.
- B. Prior approval required.** OCFW employees may not engage in outside employment without the approval of the director. Approval will be granted unless the outside employment conflicts with the agency duties of the employee or with the best interests of OCFW or of the State. Mere ownership of real estate, stocks or bonds, or similar investments ordinarily will not constitute outside employment, unless such ownership involves management responsibilities requiring a substantial amount of time or accounts for 10 percent or more of the outstanding stock in a corporation.
- C. Private Practice of Criminal Law.** Texas Government Code section 78.053 prohibits the director and any OCFW attorney from engaging in the private practice of criminal law.
- D. Approval process.** OCFW employees engaged in, or intending to engage in, outside employment must complete an OCFW "Outside Employment Statement" and submit it to a supervisor. Based on the criteria stated above, the supervisor shall recommend approval or disapproval of the outside employment and submit the statement to the director. A copy of the statement with the director's approval will be submitted to OCFW's human resources office for recordkeeping.
- E. Use of State Resources.** OCFW employees are prohibited from using agency or state resources for their outside employment, and may not hold meetings relating to outside employment on agency premises. OCFW employees may not use equipment or software

paid for or owned by the state or located on agency premises (including but not limited to computers, long distance services, photocopying, fax or internet services) for outside employment purposes. OCFW employees may not engage in outside employment on agency time, and outside employment must not impair the employee's agency work or productivity or the efficiency of the agency.

F. Use of Agency Name. OCFW employees who engage in outside employment do so in their individual capacity and may not represent to anyone that they are acting on behalf of the state, the agency, or a subdivision of the state. OCFW employees may not use agency stationery or anything bearing the agency letterhead or logo, including business cards, or use anything else that might associate activities relating to outside employment with official OCFW work.

G. Withdrawal of Approval. Permission to engage in outside employment may be withdrawn by the director if the director determines that the outside employment conflicts with the agency duties of the employee or with the best interests of the agency or the State.

11. Future Contracting or Employment

A. A former OCFW employee may not enter into an employment contract, a professional services contract, or a consulting services contract with OCFW for at least one year after leaving OCFW employment if appropriated funds will pay for the services. OCFW may enter into a professional services contract with a business entity that employs the former OCFW employee within one year of the employee's leaving the agency, provided the employee does not perform services for the business entity that are services the employee worked on while employed by OCFW. The term "employment contract" does not apply to an at will employment relationship that involves the traditional relationship of employer and employee.

B. A former OCFW employee who participated on behalf of OCFW in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the employee ceased employment with OCFW.

12. Fraud Prevention and Detection

A. **Responsibilities.** Each OCFW employee is responsible to ensure the public's expectation of honesty and integrity in government is met. The Director is responsible for coordinating efforts to prevent and detect fraud and will serve as the contact person for the Governor's Office on fraud prevention and detection activities at OCFW. The Director and the Senior Accountant are the points of contact for reporting all known, alleged or suspected fraud or other illegal activities at OCFW.

B. **Process.** OCFW employees shall report any known, alleged or suspected fraud or other illegal activities at OCFW to either the Director or the Senior Accountant. (Examples of fraud or other illegal activity include, theft, malfeasance, abuse of power or authority, "kickbacks", and embezzlement involving the loss, misappropriation or theft of any assets belonging to OCFW or the State for which OCFW is responsible, including, but not limited to cash, checks, intellectual property, property and equipment, information and other data.) The report may be oral or written (by email, regular mail, or deposited in the either the Director's or the Senior Accountant's agency mailbox) and may be anonymous.

Reports may also be made directly to the state auditor at <https://sao.fraud.texas.gov/ReportFraud>.

With all complaints, Senior Accountant will make a preliminary determination of the necessity for proceeding with an investigation of the reported fraud or illegal activity. Before proceeding with an investigation, the Senior Accountant will advise the Director of all facts known regarding the reported fraud or illegal activity. All personnel, files, data, records and equipment shall be made available to the Senior Accountant to use in investigating the occurrence of, and extent of, any fraudulent or other illegal act. Upon completing the investigation, the Senior Accountant will report the results of the investigation to the Director. The Director shall assume the duties of the Senior Accountant if the Senior Accountant is believed to be in with the suspected fraudulent activity.

- C. **Reporting to State Auditor.** If the director believes that OCFW assets may have been lost, misappropriated, or misused; or that other fraudulent or unlawful conduct has occurred in relation to the operations of OCFW, then he or she shall report the reason and basis for the belief to the state auditor.

13. Consequences of Violation

An OCFW employee who violates agency policy is subject to disciplinary action, up to and including termination. An OCFW employee who violates federal or state law may also be subject to civil or criminal penalties.

14. Compliance Monitoring

This policy and OCFW's Harassment Prevention Policy and Equal Employment Opportunity Policy shall be provided to each new OCFW employee, contractor, vendor, or volunteer, and to members of boards or commissions that are staffed by OCFW employees. Additionally, every OCFW employee and member of a board or commission that is staffed by OCFW employees shall be required to complete ethics training on an annual basis.

Under the direction of the OCFW's Senior Accountant, OCFW will conduct an annual review and risk evaluation to monitor compliance with this policy and provide guidance regarding the results and assist in the reduction of identified problem areas.

Statutory References: Texas Government Code Chapter 572 and Sections 556.004, 2203.004, and 2252.901; Texas Election Code Section 255.0031; Texas Penal Code Chapters 36 and 39.

Acknowledgment - Receipt of Information
Office of Capital and Forensic Writs Ethics and Conduct Policy

I acknowledge by my signature below that I, _____
(printed name)

received and read a copy of the Office of Capital and Forensic Writs Ethics and Conduct Policy for Agency

Employees on _____ .
(date)

(Employee Signature)

*******PLEASE RETURN A COPY OF THIS FORM TO HUMAN RESOURCES*******