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Virlindia Doss
Executive Director

C. Christopher Anderson, III
*General Counsel/
Deputy Executive Director*

State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303

(850) 488-7864 Phone
(850) 488-3077 (FAX)
www.ethics.state.fl.us

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MEMORANDUM

TO: All Interested Persons

FROM: Virlindia Doss, Executive Director *WAD*

SUBJECT: Proposed Legislation for 2018

DATE: August 3, 2017

For 2018, the Commission on Ethics makes the following recommendations regarding legislative changes to the Code of Ethics:

1. Conflicts of Interest

The law prohibits an official from having a contractual relationship with a company doing business with his or her own agency. So City Councilman A could not contract with Business B, if that company is doing business with his City. But if Councilman A creates "A, Inc.," that *corporation* can do business with Business B without violating the law, even if "A, Inc.," is solely owned by Councilman A. The Commission sees this as thwarting the underlying goal of the law, which is to prevent officials from having relationships with companies doing business with their agencies.

2. Attorney Fees

Persons against whom complaints have been filed can seek to recover costs and attorney fees from their accuser, in what can be expensive and protracted litigation. But if the complainant successfully defends against a fees petition, current law does not allow the recovery of the complainant's *own* costs and fees. The Commission proposes addressing this imbalance by allowing the prevailing party in a fees petition—whether it be the respondent or the complainant—to recover costs and fees incurred both in the fees petition and the underlying complaint proceeding.

3. Enhanced Financial Disclosure for Local Elected Officials

All elected Constitutional officers must file Form 6—Full and Public Disclosure of Financial Interests, while municipal governing board members are only required to file the less-informative Form 1—Statement of Financial Interests. The Commission believes that anyone asking for the citizens' votes should be willing to make full disclosure, and should be required to file the Form 6, and that this standard should apply uniformly to all municipalities, whether they be large or small.

4. Voting Conflicts Law

Under current law, local *elected* officials can participate in the discussion of a measure in which they have a conflict, without revealing the existence of that conflict until the vote is actually taken. This means the official can make every effort to persuade his or her colleagues without telling them (and the public) about the conflict. Appointed officials, in contrast, must declare their conflict before *participating* in the discussion of the measure. The Commission believes this restriction should apply equally to elected officers.

The Commission also believes the voting conflict standard for state officials should mirror the standard for local officials. This would mean state officials would be required to abstain from voting not only on those matters which would inure to *their own* special gain or loss, but also on matters which would inure to the special private gain or loss of a relative, principal, or business associate.

5. Representing Clients Before One's Own Board

The Commission has consistently advised in its opinions that a conflict would be created were a member of a collegial body, or his professional firm partners or associates, to represent clients before that board. The Commission views this as an important public protection, and opposes any relaxation of this standard.

6. Burden of Proof

From its inception in 1974, until 1997, the Commission applied the "preponderance of evidence" as its standard of proof in evidentiary hearings. That changed when the First District Court of Appeal ruled in Latham v. Florida Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997) that the standard should be "clear and convincing" evidence. The Commission sees this as making the law less enforceable by making cases harder to prove, and recommends a return to the preponderance of evidence standard.

7. Interim Project on "Privatized" Functions

In addition to the foregoing, the Commission has considered the potential for applying the Ethics laws to entities performing "privatized" government functions. Florida has privatized many historically government functions, including foster care services, community mental health, and aging and adult care. While a great deal of public money

is involved, the Code of Ethics does not apply to the owners, directors, or employees of the companies now providing the services. The Commission believes that whether part or all of the Code should apply, and if so, to which entities and which individuals within those entities, are questions worthy of thoughtful examination, but the number and variety of privatized functions and the array of interests affected make the scope of this issue too large for an agency of this size and resources to address with specific recommendations. To deal with these important questions in a comprehensive, fair, and well-informed way, the Commission suggests that the potential for applying the Code of Ethics to privatized government functions be the subject of an Interim Project following the 2018 legislative session.