BACK TO BASICS

The Role of the Inspector General in Promoting Public Integrity
WHAT is the Indiana Inspector General?
In the Beginning. . . Executive Order 05-03

• Governor Daniels’ vision – “Hoosiers deserve to know that government decisions are being made in the public interest. . .”

• Modeled after federal offices of Inspectors General, which are agency specific at the federal level

• Serve as a public watchdog on behalf of taxpayers and citizens for state government

• Root out fraud and ethical misconduct

• Clear guidelines, the highest standards of ethical conduct and they should be rigorously enforced
Indiana Code 4-2-7-2 Creation of IG

• There is established the office of the Inspector General
• Consists of the Inspector General and staff
• Responsible for addressing fraud, waste, abuse, and wrongdoing in agencies
• Governor appoints the Inspector General

2005 HB 1002
IC § 4-2-7

Jurisdiction of the Inspector General

- Employees of state agencies
  - includes bodies corporate and politic
  - includes public universities
- Elected state officers
- Special state appointees
  - includes every conceivable board, commission, authority, etc.
- Persons with a business relationship with the State
Jurisdiction of the Inspector General does NOT include:

- The judicial department of state government
- The legislative department of state government
- A political subdivision
  - county, city, town, township, school district, etc.
IC § 4-2-6

Indiana Code 4-2-6-2 Creation of the State Ethics Commission in 1974

• There is established the State Ethics Commission
• 5 members
• Appointed by the Governor for 4 year terms
• Role is to:
  - act as an advisory body
  - receive and hear complaints filed by IG
• Ultimate Authority on interpretation of the Code
  - No appeal, no judicial review
IC § 4-2-6

Jurisdiction of the State Ethics Commission

• Employees of state agencies
  -includes bodies corporate and politic

• Elected state officers

• Special state appointees
  - includes every conceivable board, commission, authority, etc.

• Persons with or seeking a business relationship with the State
Jurisdiction of the State Ethics Commission does NOT include:

• The judicial department of state government
• The legislative department of state government
• A political subdivision
  - county, city, town, township, school district, etc.
• A state educational institution****
IG Office Structure

- 5 Attorneys
- 5 Special Agents
- Admin Staff
Appointed by the Governor

Not subject to removal except for
  • Malfeasance
  • Misfeasance
  • Nonfeasance or Neglect of Duty

Compensation can’t be reduced
MISSION

The mission of the Inspector General and staff is to reduce fraud, waste, abuse, mismanagement and wrongdoing in state executive branch agencies. Through education, advice, investigations, prosecutions and legislative recommendations, the Inspector General fosters a culture of integrity that contributes to public confidence in state government.
WHY

What

Why

How
WHY was the Office of Inspector General created?
Hoosiers deserve to know that government decisions are being made in the public interest, not because of gifts, political contributions, or undue influence;

It is imperative that clear ethics guidelines be developed and rigorously enforced to ensure that all state employees meet the highest standards of conduct;

- Executive Order 05-03
Economists have long studied the effects of corruption. In dozens of studies across different times and place the same sorts of findings emerge. Corrupt places grow more slowly than honest ones. Corruption reduces employment and investment as businesses see greater risk from dishonest dealings. Corruption siphons off tax dollars, leaving infrastructure in disrepair. Corrupt places have schools with fewer resources and students suffer as a result.

Prof. Michael Hicks, Ball State University
May 2017. Photo by
https://apgovernment midterm.wikispaces.com/Federalism+-Sidlauskas
In short, abundant economic research confirms the common sense notion that corruption robs a place of its economic vitality while condemning its residents to poor public services and dismal opportunities. In the end, public corruption steals from innocent residents the chance to build wealth in their homes, educate their children and work towards the American dream.
“High levels of public debt can threaten the fiscal health of a government by placing a long-term claim on the resources available ... and reducing the scope for supporting other important service demands.”

—Corruption and State and Local Government Debt Expansion Liu, Moldogaziev and Mikesell, January 2017
Let’s Define Corruption

Misuse
Public Office
For Private Gain
Crimes involving abuses of public trust by government officials.
-U.S. DOJ

Accepting bribes
Awarding government contracts to vendors without competitive bidding
Accepting kickbacks from private vendors for government business

Overstating travel expenses or hours worked
Selling confidential information
Using government credit cards for personal purchases
Falsifying official documents

Theft of government property like computers, fuel, equipment, furnishings, supplies
Mail or Wire fraud
Extortion
Robbery
Soliciting bribes by police officers

Narcotics offenses
Smuggling illegal aliens
Sexual misconduct

Image by Pixabay.com
Impacts of Corruption on a Community’s Economic Vitality

States with greater instances of public corruption have higher aggregate levels of state and local debt.

- Corruption affects bond pricing
- Corruption affects government credit risk
- Corruption impacts long term debt more so than short term debt
- Private purpose debt is more susceptible to public corruption
Impacts of Corruption on a Community’s Economic Vitality

Misuse of public office for private gain

From Clerk Treasurers to Building Commissioners to Sheriffs to Mayors and Legislators and beyond
Detroit, An American Autopsy
By Charlie LeDuff

A story about the fall of the Motor City
Sullivan Utility Clerk took customer payments and posted to her own utility account. $686 Prosecutor has case.

Centerville Utility Clerk recorded customers’ overpayments to family accounts $950. Prosecutor has case.

Guthrie Township Trustee paid himself > $10,000 of undocumented reimbursements. Felony charges of Theft & Official Misconduct pending.
Real Issues in Indiana Communities

Chief of the Patriot VFD charged with Theft and Official Misconduct – 40 personal elec bills, satellite bills, groceries, restaurants - $50K 2014 - 2018

Martinsville Chief of Police arrested for submitting false vouchers for unearned sick and overtime pay - $8,000

Wolcott Clerk Treasurer – Theft $7,000 paid personal expenses

Evansville State Hospital business administrator stole patient funds $12,000. Convicted of Theft and Official Misconduct

Whiteland VFD Sec/Treas stole $60K in public funds for personal expenses

Yorktown Utility Clerk failed to deposit $1,770 of utility collections
Real Issues in Indiana Communities

Clerk of Olive Township – paid her elec bills with Twshp $

Wabash City Waste Water billing clerk who stole $152,000 over 4 yrs

Wayne Twshp Fire Dept. Treasurer cash w/d 226 times over 4 yrs

Greene County Solid Waste Mangmt $2400 cash w/d or not deposited

Clerk Treasurer of Town of Kennard paid her utility bills from town $ and did not deposit cash over 5 years

Marion County Treas. employee in 1 month collected and did not report or deposit $3,155

Fayette and Hendricks Co. elementary schools – book fair money and other receipts never deposited $3800 and $17,000 respectfully

Yorktown Clerk removed from office for neglect of duties (failure to perform critical, official, mandatory duties prescribed by law) Decided on appeal on May 11, 2018
The Slippery Slope of Fraud

1. It doesn’t start out as dishonest.
2. It starts with pressure.
3. It starts small.
4. It starts with gray areas.
5. It grows over time until.....
6. There is no way out.

Michael R. Young, Accounting Irregularities and Financial Fraud: A Corporate Governance Guide
The Fraud Triangle

Perceived Pressure

Perceived Opportunity

Rationalization

Donald R. Cressey, Indiana University Graduate Student and famed Professor and Pioneer Fraud Expert
Common Rationalizations

1. I’ll pay it back.
2. It’s for a good purpose.
3. I deserve it.
4. They can afford it.
5. Nobody will get hurt.
6. I’m not a crook.
7. Everyone does business this way.
Why People Don’t Come Forward

- Fear of Retaliation
- It will not be confidential
- Fear of being labeled as a “tattletale”
- Nothing will happen
- It has no personal impact
- Don’t know how or who to contact
HOW

What

Why

How
HOW does the Indiana Inspector General fulfill its role?
Code of Ethics

• Indiana Code § 4-2-6-1 to 17
• 42 IAC § 1-1-1 to 1-11-1
# The Code of Ethics

<table>
<thead>
<tr>
<th>Category</th>
<th>Example</th>
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<tbody>
<tr>
<td>Gifts - Donor and Donee Restrictions</td>
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<td>Honoraria</td>
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<td>Political Activity</td>
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<td>Moonlighting</td>
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<tr>
<td>Conflicts of Interests; Decisions/Votes</td>
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<td>Conflicts of Interests; Contracts</td>
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<td>Additional Compensation</td>
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<td>Bribery</td>
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<td>Use of State Property</td>
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<td>Ghost Employment</td>
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<td>Post-employment Restrictions</td>
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<td>Nepotism</td>
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SEC Tools

- Impose a civil penalty 3X value of benefit received
- Cancel a contract
- Bar a person from entering into a contract with an agency for a specified period
- Order restitution or disgorgement
- Reprimand, suspend or terminate an employee or SSA

- Reprimand or recommend impeachment of a state officer
- Bar a person from future state employment or appointment
- Revoke a license or permit issued by an agency
- Bar a person from obtaining a license or permit issued by an agency
- Revoke the registration of a lobbyist
- Bar a person from future lobbying activity with a state officer or agency
OIG Tools

- Law Enforcement Office with subpoena and arrest powers
- Confidentiality for reporting parties and investigations
- Protections against retaliation for reporting parties
- Ability to prosecute cases if local prosecutor won’t accept

- Ability to intervene in all false claims cases
- Informal Advisory Opinions 300 + per year
- Educational offerings voluntary and mandatory
You are our Greatest Tool

Who will tell the truth if not the lawyers?

Justice Massa quoting Hon. Larry McKinney
Hoosiers deserve to know that government decisions are being made in the public interest not self interest.
Credits

Special thanks to the following resources:

- Presentation template by SlidesCarnival
- Photographs by Startup Stock Photos, FreeFoto.com, Wikispaces.com, Pixabay.com and by Lori Torres.
Thank you
Confidentiality and the Government Lawyer

Office of the Inspector General
12th Annual Legal and Ethics Conference
November 14, 2019

Hon. Gary L. Miller
Marion Superior Court
CAVEAT:

Don’t confuse discipline with rule violations
In the beginning...
A&D Rule 22

“I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of Indiana; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any action, proceeding, or defense which shall appear to me to be unjust, but this obligation shall not prevent me from defending a person charged with crime in any case; I will employ for the purpose of maintaining the causes confided to me, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client at every peril to myself; I will abstain from offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will not encourage either the commencement or the continuance of any action or proceeding from any motive of passion or interest; I will never reject, from any consideration personal to myself, the cause of the defenseless, the oppressed or those who cannot afford adequate legal assistance; so help me God.”
A&D Rule 22

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I will maintain the confidence and preserve inviolate the secrets of my client at every peril to myself
Confidences vs Secrets?
“confidence” means information protected by the attorney-client privilege under applicable law.

“secret” means other information gained in the professional relationship if the client has requested it be held confidential or if it is reasonably foreseeable that disclosure of the information would be embarrassing or detrimental to the client.
“confidence” means information protected by the **attorney-client privilege** under applicable law.

“secret” means **other information gained in the professional relationship** if the client has requested it be held confidential or if it is reasonably foreseeable that disclosure of the information would be embarrassing or detrimental to the client.
A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
IRPC 1.6

A lawyer **shall not** reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
IRPC 1.6 (b)

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or from committing fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.
IRPC 1.6 (b)

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(6) to comply with other law or a court order.
You are out having a cocktail with your friends after a long day.

You say “I had a client from hell.”

What did you do wrong?
IRPC 1.6

A lawyer **shall not** reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
You are at a cocktail party with friends.

You say, “Hey, I just filed a financial declaration with the Court in a huge case and let me tell you what’s in it”.

Did you violate IRPC 1.6?
IRPC 1.6

A lawyer *shall not* reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
Lessons?

Violations of 1.6 occur all the time
JK Rowling 'anger' at legal firm over pseudonym leak

JK Rowling has said she feels "very angry" after finding out her pseudonym Robert Galbraith was leaked by a legal firm.

The Harry Potter author was revealed as the writer of crime novel The Cuckoo's Calling in the Sunday Times.

She found out the leak came from law firm Russells, whom she had assumed she "could expect total confidentiality from".

"I feel very angry that my trust turned out to be misplaced."
You’ve probably read about the New York Times reporter who says that he overheard lawyers for President Donald Trump discuss the ongoing Russia investigation at a Washington, D.C. restaurant, and then reported on the talk — which revealed details of a strategy debate, the alleged existence of documents “locked in a safe,” and other purported insight on the internal workings of the President’s legal team.
Lessons?

Violations of 1.6 occur all the time
Many are not harmful
Some are harmful

KNOW the rule so your internal moral
compass points you in the right
direction
Special Issues for the Government Lawyer

When representing a government entity, who is the client?

Who gets the protection of 1.6?
Who speaks for the government client, i.e., who exercises the usual authority of a client?

Who may consent to the disclosure of confidential information?
the “public interest”

the public at large

the entire government

the branch of government employing the lawyer

the particular agency employing the lawyer

a particular government official (e.g. head of a government organization) in her official individual capacity
(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.
Indiana RPC 1.13  Organization as Client

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.
Indiana RPC 1.13 Organization as Client

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
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(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
The Checklist

1. ‘person’ intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization
2. violation of law which reasonably might be imputed to the organization
3. likely to result in substantial injury to the organization

THEN

proceed as is reasonably necessary in the best interest of the organization
IF...

• highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law

• the lawyer reasonably believes

• the violation is reasonably certain to result in substantial injury to the organization,

THEN

the lawyer may reveal 1.6 information

ONLY
relating to the representation, and

ONLY
to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
the “public interest”
the public at large
the entire government
the branch of government employing the lawyer
the particular agency employing the lawyer
a particular government official (such as the head of a government organization) in her official or individual capacity
When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6.
This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.
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The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules.
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Indiana RPC 1.13   Comment [9]

Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule.
Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule.
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Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances.
Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances.
Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved.
Indiana to consider creating a government corruption hotline

October 28, 2019 | Associated Press

KEYWORDS CITY GOVERNMENT / CORRUPTION / ETHICS & PROFESSIONAL RESPONSIBILITY / GOVERNMENT / INDIANA GENERAL ASSEMBLY / LOCAL GOVERNMENT / OFFICIAL MISCONDUCT / STATE AGENCIES / STATE GOVERNMENT
Trend towards disclosure:
FOIA, Privacy Acts, Presidential Records Act

How do we harmonize lawyer/client secrecy with Governmental openness?
NIXON RESIGNS
Ford will become president at noon
No deal made on prosecution, Jaworski says

Decision is laid to weakness of political base

Washington—Even President Nixon's supporters, now that the Watergate scandal has reached the point where National Security Adviser John D. Ehrlichman is to be questioned, are starting to think about the political consequences of the president's continuing presence in the White House.

President Ford, who will take over at noon, a tense task of trying to bring order into a chaotic administration.

WASHINGTON—President Nixon, under mounting pressure to resign, is to announce tonight that he plans to start his campaign for re-election.

Mr. Nixon's decision to seek re-election will be a major blow to his political opponents, who had hoped that he would resign and let Vice President Ford take over the presidency.

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MARK FELT
THE MAN WHO BROUGHT DOWN THE WHITE HOUSE
Felt had loyalty to FBI
More accurately, to the executive branch
Under 1.6, he had duty to go up the chain before revealing, i.e., Director, Atty Gen, President
He didn’t
Parallels with current administration?

Pay attention to how 1.6 is raised
LESSONS?

Understand IRPC 1.6

Know your role in the Organization

There are no simple answers
BREAK

12th ANNUAL LEGAL & ETHICS CONFERENCE

NOVEMBER 14, 2019
OIG PANEL: ETHICS CHALLENGES FOR A CHANGING WORKFORCE

Moderator: Britni Saunders, Executive Director, SPD

Panelists: Jen Cooper, State Ethics Director; Kelly Elliott, Staff Attorney; & Tiffany Mulligan, Chief Legal Counsel, OIG
Remote Work / Telecommuting
Remote Work / Telecommuting

The Rules

• Ghost Employment (42 IAC 1-5-13)

• Confidential Information (42 IAC 1-5-10, 11)
Remote Work / Telecommuting

Takeaways

- Policies
- Expectations/Tracking
- IOT approved devices/connections
- Extra care with confidential information
Side jobs / Moonlighting
Side Jobs / Moonlighting

The Rules

- Outside Employment (IC 4-2-6-5.5)
- Ghost Employment (42 IAC 1-5-13)
- Use of State Property (IC 4-2-6-17)
- Conflict of Interests – Contracts (IC 4-2-6-10.5)
Side Jobs / Moonlighting

Takeaways

• Policies
• Keep records
• Clear separation
• Other ethics rules could be implicated
Political Activity
Political Activity

The Rules

- Political Activity (42 IAC 1-5-4)
Political Activity

Takeaways

• Hatch Act
• Dual Office Holding
• Other ethics rules could be implicated
Questions?
Ethics Officer Achievement Awards
Award for Excellence: New Ethics Officer

Amber Nicole Ying

IN Department of Revenue
Award for Excellence: Veteran Ethics Officer

Christopher B. Serak

IN Department of Transportation
Thank you for attending

- Please turn in CLE Forms as you exit (CPE forms go to accrediting body);
- Look out for a survey in your inbox tomorrow morning; and
- See you next year!
LEGAL & ETHICS CONFERENCE