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Accountability & the Consequences of Unethical Behavior

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Accountability in Public Service

- Carrying through on promises and delivering effective government operations
- How?
 - For large projects, set S.M.A.R.T. goals (Specific, Measurable, Attainable, Relevant, Timely)
 - Follow through and follow up
 - Address poor performers

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“EVERYONE MAKES MISTAKES,
BUT ONLY A PERSON
WITH INTEGRITY
OWNS UP TO THEM.”

FRANKLIN D. ROOSEVELT



Accountability in public service

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- Taking ownership of one's actions rather than assigning blame

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Accountability in Public Service–

Includes Building (or Repairing) Relationships



- This is part of the foundation of both achievement and sound ethical practice
- Requires self-reflection and being willing to take the lead
 - Internal
 - Within a government or department
 - External
 - With the public
 - With other governments or entities

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Possible Causes of Friction

- “Veteran or Old-Timer” versus “Newcomer”
- Partisanship – regarding a single controversial issue or political views
- Loyalties to certain person(s)
- Competing for “alpha-dog”
- Incompatible personalities



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Impacts of Fractured Relationships

- Poor productivity
- Adverse impact on new employee/board member recruitment
- Public embarrassment or image problems
- On a board, it may transfer all the power to the tie-breaker
- Short tenures of elected officials
- Increased staff turnover, poor employee morale



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Building (or Repairing) Relationships

- Have a direct difficult conversation: get a consensus that a problem exists
- Try to agree on “values” that will apply to your interactions
 - Civility and courtesy
 - Equality of participation
 - Acknowledgment of elected official/presiding officer’s role
 - Staying engaged
 - Time to disengage
 - Following law and proper procedures

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Building (or Repairing) Relationships

- Individual strategies:
 - Assume the other’s good faith and intentions
 - Resist the urge to “write off” the problem person(s)
 - Listen more than you talk
 - Be the generous one on a sticking point - go further than halfway to bridge a gap
 - Use postures, tone, and body language of respect and engagement
 - Consider a “no-business” casual meeting: team building exercise, lunch or dinner
 - For some, talking with an outside facilitator or mediator may help (credible colleague approach)

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Building (or Repairing) Relationships

- Prioritize Regular Communication
- Re-think your role: you can be a mentor, or be more open to being mentored
- Acknowledge it when you see the other(s) making an effort to improve
- Focus on the Future...Let the Past be the Past
- Refuse to Let Professional Squabbles Become Personal
- Acting “as if”

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10 | The Outlier Problem

- The “lone wolf” or “lone crusader” who won’t join the team
- Exhibits extreme self-interest, and may even delight in being the “independent” outsider
- May believe he/she was elected to “disrupt the status quo”
- Challenging or deviant personality who follows his/her own agenda
- Takes positions on an oppositional basis
- Often hates “soft” discussions
- Disrupts collaboration and processes
- Can be a serious liability



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11 | Solving the Outlier Problem

- If this is YOU:
 - Your behavior does not further your goals to accomplish an agenda, because alone you cannot garner a majority
 - Is it enough to accomplish nothing outside of being the “loyal opposition”?
 - Natural reactions to government dysfunction: distress, poor morale
- If this is WHO YOU MUST WORK WITH:
 - If possible, address the issue in a neutral environment with specific examples of the negative impacts
 - Don’t allow him/her to push your buttons
 - Focus on “business as usual” and modeling behavioral “norms”
 - Get outside help, if needed

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12 | Don’t Just Ignore it: Dangerous Ways of Thinking

- That’s just how it is.
- She’s worked here for 25 years. I know her whole family. I may not get along with her, but I don’t think she would do anything that was dishonest or unethical.
- I can’t get this done because no one will help me.
- Countdown to retirement



Accountability requires action – not looking the other way.

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The aftermath of unethical behavior



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Reporting Unethical Behavior



- Build an “if you see something, say something” culture
- Be an approachable supervisor. Encourage employees to ask questions and report anything that seems unusual.
- The law protects whistleblowers who report *illegal* (and some unethical) conduct from retaliation.
 - NFEPA, “public policy” exception to at-will employment doctrine, possible First Amendment protections (speech on matters of public concern)

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Managing Reports of Unethical Behavior





- Supervisors should take all reports of illegal or unethical conduct seriously
- Supervisors should be trained on how to tactfully and delicately investigate and manage ethical issues or should outsource investigations.
- Available resources include:
 - County Attorneys
 - NIRMMA Employment Law Helpline (supervisors only) – 866.896.6423
 - Nebraska State Auditor’s Office – 402.471.3753 or Deann.Haeffner@Nebraska.gov
 - Nebraska Attorney General’s Office – 402.471.2683 (central hub for routing)

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Consequences of Unethical Behavior

- Damages to reputation, public shaming
 - Difficult to be reelected or hold other public office, hard to find other work
- Criminal charges
 - Time in jail, probation, treatment, criminal restitution, attorney fees, negative publicity
- Civil lawsuits
 - Monetary damages, attorney fees, negative publicity



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When Ethical Lapses Turn Criminal Under NE law


- Bribery – Neb. Rev. Stat. §28-917 (felony)
- Official misconduct – Neb. Rev. Stat. §28-924 (Class II misdemeanor - \$1000 fine/60 mo. jail)
 - Knowingly violating statute/rule/regulation relating to official duties
- Violation of specific governmental misconduct statutes (nepotism, gifts, misuse of official information, conflicts of interest)
- Violations of Open Meetings Act, §84-1414 (Class IV misdemeanor/1st, Class III/2nd)
- Violation of Competitive Bidding Act (Public Lettings), Neb. Rev. Stat. §23-3108, 73-101
- Violation of Budget Act, Neb. Rev. Stat. §23-916
- Violation of Purchasing Act, Neb. Rev. Stat. §23-916

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Nepotism - Neb. Rev. Stat. §49-1499.04

- May employ/recommend/supervise an immediate family member if:
 - (a) No abuse of official position;
 - (b) Full disclosure on the record at public meeting to the governing body
 - (c) Written disclosure to County Clerk
 - (d) Board has approved
- Additional requirements:
 - Due consideration of other qualified candidates
 - No unreasonably high salary
 - Must perform the duties of the position
 - No one else is terminated to make it happen
- "Grandfathering" – doesn't apply to positions preexisting an election if there is full disclosure on taking office, and doesn't apply to arrangements that existed prior to September 1, 2001



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Conflicts of Interest - Neb. Rev. Stat. §49-1499.03

- An official must disclose, in writing, the details of any potential financial conflict of interest posed by a decision or action he/she is required to make by virtue of his public office to the NADC and the County Clerk
- Officials must disclose contract interests and potential contract-related conflicts
- The NADC advises the official on what must be done to remove the person from having influence over the action or decision on the matter

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Gifts - Neb. Rev. Stat. §49-14,101

- No person shall offer or giveto a public official or public employee or his/her immediate family or business....anything of value....based on an agreement that the vote, official action, or judgment of any public official.... or public employee....would be influenced thereby.
- Neb. Rev. Stat. §23-3113 – special provisions prohibiting gifts to County Purchasing agents and their office staff

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Misuse of Office



- Neb. Rev. Stat., Chapter 28, Article 9
 - 28-911 – abuse of public records
 - 28-924 – official misconduct
 - 28-925 – misuse of official information
 - 28-926 – oppression under color of office

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Addressing Unethical Conduct by Elected Officials

- Legal options for removal before end of term:
 - Judicial proceedings for Court to Remove – **Neb. Rev. Stat. §23-2001**
All county officers may be charged, tried, and removed from office, for: (1) habitual or willful neglect of duty, (2) extortion, (3) corruption, (4) willful maladministration in office, (5) conviction of a felony, (6) habitual drunkenness, or (7) official misconduct as defined in section 28-924.
 - Recall election – **Neb. Rev. Stat. §32-1303**
 - Any reason
 - petition signed by 35% of total vote for office in prior election
 - 45 recall elections of local officials in NE since 2008, sixth highest number in United States
 - Quo warranto action – **Neb. Rev. Stat. §25-21.147, et. seq.**
 - Limited to county attorneys and law enforcement officers

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We've Discovered an Unethical Official: Can't We Cancel His/Her Bond or Insurance? ... *Not always that easy*

Part A: Public Employee Dishonesty, paragraph D:

- 1. **Cancellation As To Any Employee:** This insurance is cancelled as to any *employee*:
 - Immediately upon discovery by *you* or any official or *employee* authorized to manage, govern or control your employees, of any act on the part of an *employee* whether before or after becoming employed by *you* which would constitute a **loss covered under the terms of this coverage**.
- Covered loss? Needs to qualify as an act of "employee dishonesty" (Can be difficult when criminal proceedings are pending)

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Tragedy in a Small Nebraska County

- Board member unilaterally instructed his personal friend to undertake a road work project as part of his personal "agenda"
 - No bidding process
 - Project had previously been removed from the 1 and 6 year plan – not budgeted
 - Never approved by Board in any public meeting prior to performance of work
 - Member tried to push his friend's billing invoices for payment by Board after-the-fact
 - Federally protected wetlands
- County Attorney reported the misconduct to AG's office, resulting a special prosecutor filing several misdemeanor charges against the Board member
- Board member committed made threats, and ultimately committed suicide
- Civil Litigation followed – because friends of the deceased board member were never paid for the road work

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Accountability Protects Against Liability Risks

How to be proactive:

- Clear expectations: Policies and Procedures, Codes of Ethics
- Training
- Active Supervision
- Corrective Actions
- Periodic, consistent review of performance with adjustments as needed



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It Happens Here- Fraud in County Government –

RECENT CRIME CLAIMS FROM NEBRASKA COUNTIES



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Understanding “Fraud”

- Dictionary definition: “wrongful or criminal deception intended to result in financial or personal gain.”
- Concept is found in a variety of criminal and civil offenses
 - Fraudulent misrepresentation
 - Fraud in inducement of a contract
 - Embezzlement
 - Theft by deception (class of crime varies by amount taken)
 - Theft by unlawful taking (class of crime varies by amount taken)
 - Unauthorized use of a financial transaction device
- Statute of limitations for civil suit is four years after discovery of the fraud – Neb. Rev. Stat. §25-207



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Crime Coverage

- NIRMA crime coverage claims are a notable recent risk trend

Part A: Public Employee Dishonesty (Including Faithful Performance)

- Requires member to determine amount of loss and complete/submit "Proof of Loss – Fidelity Bond" to NIRMA – this can be a very difficult task, particularly when the time period of the fraud is lengthy
- Common Coverage Exclusions: "Indirect Loss" – including "Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance."
- "Covered loss" – must exceed county's deductible
- Current policy year deductible: \$5,000 or 20% of loss, whichever is greater



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Member Duties in the Event of a Loss

- After you discover a loss or a situation that may result in loss of, or loss from damage to, Covered Property you must:
 1. Notify us as soon as possible. You must notify the local law enforcement authorities if you have reason to believe that any loss involves a violation of law;
 2. Submit to examination under oath at our request and give us a signed statement of your answers;
 3. Give us a detailed, sworn proof of loss within 120 days;
 4. Be cooperative with us in the investigation and settlement of any claim;
 5. Produce for our examination all pertinent records;
 6. Secure all of your rights of recovery against any person or organization responsible for the loss and do nothing to impair those rights.



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Taking chances to live larger

- Deputy County Clerk embezzled nearly \$200,000 over about 3 years
- Three-person office
- What she did:
 - Used existing county credit cards for personal purposes; submitted amounts as county claims without itemization of charges – easier to hide because of an influx of expenses from the construction of a new jail
 - Applied for and opened new credit card accounts in the name of the county office, re-directed the bills to her residential address, and paid the bills online using county financial accounts
 - Wrote checks from county's imprest and health and medical accounts; altered the checks to make herself the payee and then deposited them into her own personal bank account
- Why she did it: To travel, to buy home décor, to buy groceries, to play "robin hood"



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The long road after getting caught

- Criminal prosecution: Pled no contest to a felony, served one year in Lincoln Community Corrections Center
- Only amount paid for restitution in criminal case was forfeited bond
- NIRMA and County filed civil suit to recover in subrogation
 - Defendant initially disputed claims: "I stole, but not as much as the County claims"
 - Defendant then disappeared, and defaulted on a motion for summary judgment
 - Continued to play the victim on social media
- Paid \$20/month on civil judgment for a year before declaring bankruptcy
- Adversary complaint needed to exempt the civil judgment from discharge
- Thereafter disputed garnishment of wages, insisting "I'm a good person."

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Former Harlan County treasurer gets 90 days in jail for stealing \$108,000

By ASHLEY BEBENSEE
Hub Staff Writer Mar 5, 2019



ALMA — Harlan County's former treasurer was sentenced Monday to 90 days in jail and four years probation for felony theft after a state auditor's report showed \$108,000 missing.

Diane Grotfeld of Alma was charged with felony theft by deception, official misconduct and abuse of public records as a result of the 2018 State Auditor's Report, which showed that approximately \$108,000 was missing from the Harlan County treasurer's office during the last three years.

The Harlan County Sheriff's Department turned over the matter to the Nebraska State Patrol for investigation. Grotfeld resigned July 17 as the Harlan County treasurer. Grotfeld pleaded no contest Dec. 28 in Harlan County District Court to felony theft of deception and abuse of public records. A Class II misdemeanor charge of official misconduct was dropped.

https://www.koarneyhub.com/news/local/former-harlan-county-treasurer-gets-days-in-jail-for-stealing/article_34cd6896-3f66-11e9-bd6b-3b784bd70873.html

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No department is immune, each has its own vulnerabilities

- * Employee in County Attorney's Office - handled pretrial diversion
- * Re-routed cash received to personal use, tampered with computer records on payments
- * Approximate amount of loss: \$96,500
- * Occurred over a period of roughly 2.5 years
- * Discovered when Board wondered why diversion program was not paying for itself
- * Deeper hiring investigation may have revealed past misconduct - misdemeanor theft conviction and disbarment as attorney in another State
- * Six year prison sentence, restitution ordered for amount of loss
- * Investigative expenses were high: private attorneys, forensic exam of computers, auditor

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One who Got Away with It

- Sheriff's Office, medium sized County
- Annual audit revealed funds shortage - approximately \$31,000 in missing cash received but not deposited
- Investigation conducted by State Patrol/State Attorney General's Office
 - Theft narrowed to a four month period
 - Everyone in the office was polygraphed - all passed
 - Part time bookkeeper with zero past experience recently hired & responsible for deposits
 - Large amounts of cash kept in an unsecured area open to public and unlocked
- AG investigator comments:
 - "Sloppiest bookkeeping we've ever seen."
 - "We're convinced it was an inside job but we can't prove it."

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One who didn't get away with it

- Sheriff's Office – Office Manager – 33 year veteran
- Small sized County
- \$52K over approximately 5 years
- Diverted cash payments from jail activities - inmate work release and prisoner bonds

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A Mother's Love Gone Wrong

- Treasurer's Office clerk employee since 1969, age 66
 - Unhealthy relationship with Daughter
 - Daughter repeatedly told her mother over period of years she was going to get a million-dollar lawsuit settlement and would pay her back, but needed cash now to pay lawyers and meet other expenses
 - Later investigation revealed that mother had dozens of wire-transfers of money to her daughter
 - Both had filed for bankruptcy
 - What she did:
 - Began writing checks for "insufficient funds" and taking money
 - Altered bookkeeping records prepared by two other employees (with whom she'd worked for more than twenty years and spent time with outside of work)
- Discovered when a co-worker got suspicious and couldn't balance books
- Co-worker confronted clerk, she admitted theft immediately
 - Clerk asked co-worker not to report it, professed she would pay it back
 - When asked how much she took, Clerk turned over exact accounting to the penny – over \$31,000

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A Mother's Love Gone Wrong: *aftermath*

Nebraska State Patrol Investigation:

- Others in office reported that clerk would talk to daughter multiple times per day fighting about money for years, but had recently become more secretive in conversations
- Other county employees reported they had noticed clerk lost significant weight, assumed she was on a diet
- Clerk recently seemed detached and lacking emotion
- Clerk had also become more secretive both in performing her duties
- County hired private auditor to determine extent of theft – cost \$27,984 (nearly as much as total theft amount)
- Judge in criminal case refused to award the audit costs in restitution, these were also not part of the “covered loss”
- Next year's State Treasurer audit cost versus private audit cost: \$6,500 vs. \$21,000



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Many “small” errors paint a big bad picture

- State Audit revealed numerous problems in small elected office of combined County Clerk/Register of Deeds/District Court Clerk/Election Commissioner
 - Excessive petty cash
 - Late payments on credit card and to federal government, resulting in unnecessary fees
 - Employee reimbursement claims with excessive tipping, alcohol, insufficient documentation
 - An improper donation to a silent auction
 - Improper personal use of “cash back rewards” and “incentive gifts” from online stores
 - Inventory inaccuracies
 - Unpaid fees to District Court resulted in no collection efforts or declaration of uncollectible
- Led to bigger issue with payroll/fund discrepancies, still under investigation by outside counsel



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A cautionary tale from a village

- Clerk for the Village of Pilger – news story from Jan. 2020
 - <https://www.ketv.com/article/pilger-could-have-used-a-lot-of-that-money/30461942>
 - \$719,000 in questionable expenditures going back to 2006
 - Several of the payments went to entities in New York, Connecticut and Quebec, Canada, at mailing addresses that the auditor described as “questionable business locations.” They included a vape store, UPS locations, mailrooms and apartment buildings in both the U.S. and Canada. Some of the checks paid for services never received, the audit said.
 - According to Nebraska State Auditor's report, Village Clerk gave blank checks to the Pilger Board Chair, who simply signed them.
- Charged with felonies, criminal proceedings are ongoing



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Summing up . . .

- Every County Department has potential vulnerabilities.
- Even your veteran employees can be wrongdoers, and the trust and knowledge they have could actually help them accomplish fraud.
- Don't dismiss potential fraud as, "that's why we buy insurance!" Incidental non-covered costs are often high, and the aftermath of a fraud incident is burdensome.
- Be proactive by spotting the red flags that indicate potential fraud incidents – as Eric Rodriguez will discuss next.

**It takes 20 years to
build a reputation
and five minutes
to ruin it. If you
think about that,
you'll do things
differently.**

-Warren Buffett