

Ethical Considerations: The Basics

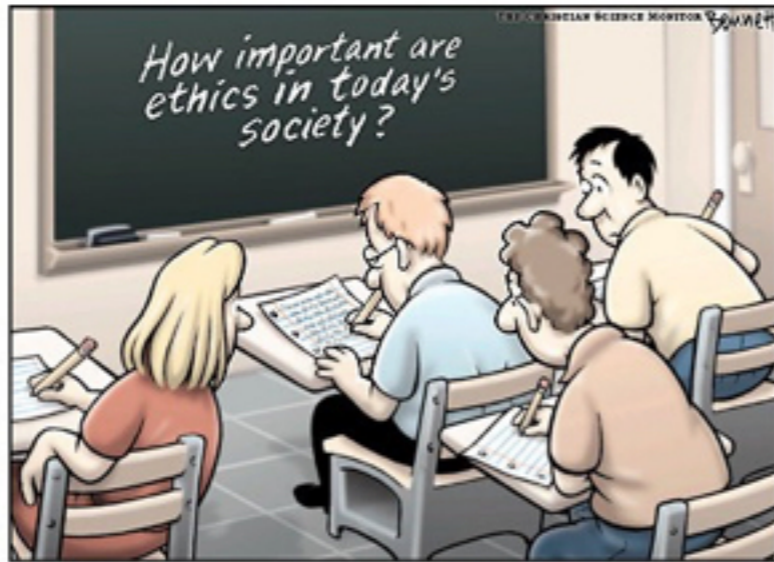
Presented by:
Kurt M. Spengler , Esq. and Kevin G. Mercer, Esq.



WICKER SMITH
ATTORNEYS AT LAW

Why do Ethics Matter?

- “The reputation of a thousand years is determined by the conduct of one hour.”



Ethics v. Morals

- What are they?
- Where do they come from?
- Why do we do it?
- What if we don't do it?
- Flexibility?



Morality

- Principles or habits with respect to right or wrong conduct.
- “Right vs. Wrong” decisions:
 - Honesty v. Lying
 - Paying v. Stealing
- Personal/Internal:
 - “Feels” like the right thing
 - i.e., according to the way I was taught, this IS the right thing



Kronk's Dilemma



Ethics

- Rules of conduct recognized in a particular class of human actions or a particular group, culture, etc.
- Social System/External:
 - Governed largely by social norms
 - Derived from morals
- “Right v. Right” Decisions:
 - Example: Honesty vs. Loyalty
 - I need to honestly answer your question v. I promised to keep the information confidential



Principals of Professional Ethics

- Impartiality / Objectivity
- Full Disclosure
- Confidentiality
- Due diligence / Duty of Care
- Fidelity to professional responsibilities
- Avoiding potential or apparent conflict of interest
- Even when not written into a “code,” professional ethics are expected.

Ethical Standards for Insurers

- Florida Administrative Code 69B-220.201 et seq.
 - Applies to all adjusters
 - Adjusters are the “face” of the insurance company
- 69B-220.201(3) Code of Ethics:
 - “The work of adjusting insurance claims engages the public trust.”
 - “An adjuster shall put the duty for fair and honest treatment of the claimant above the adjuster's own interests in every instance.”



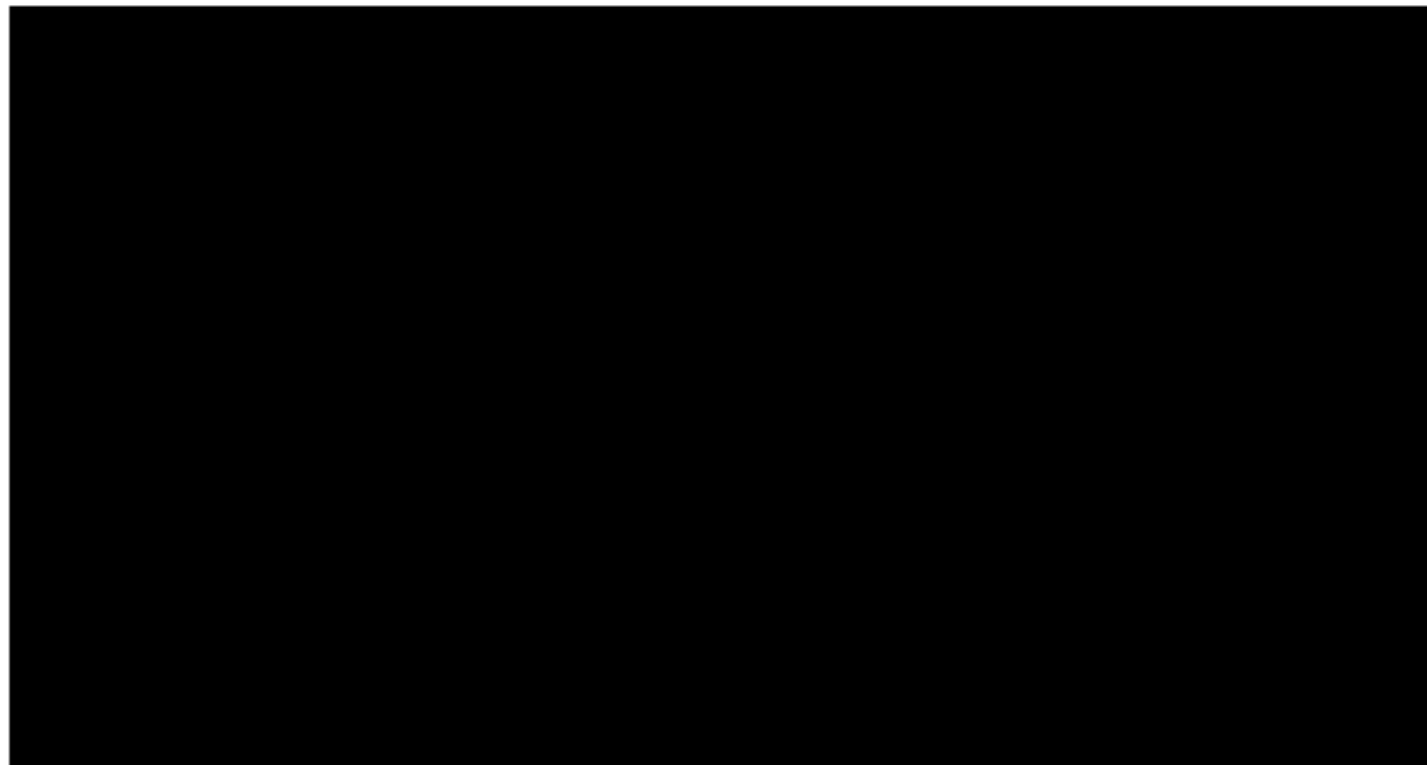
Ethical Standards for Insurers

- The importance of knowing the Code of Ethics:
 1. Claims handling is a regulated profession:
 - Ethical violations may lead to reprimand, suspension, or even a revoked license.
 1. It's not uncommon for insureds and their attorneys to contend ethical violations are evidence of "bad-faith."
 3. Ignorance of ethical rules may result in awkward and embarrassing moments at deposition or trial.
 4. An understanding of ethical rules will lead to effective claim management.



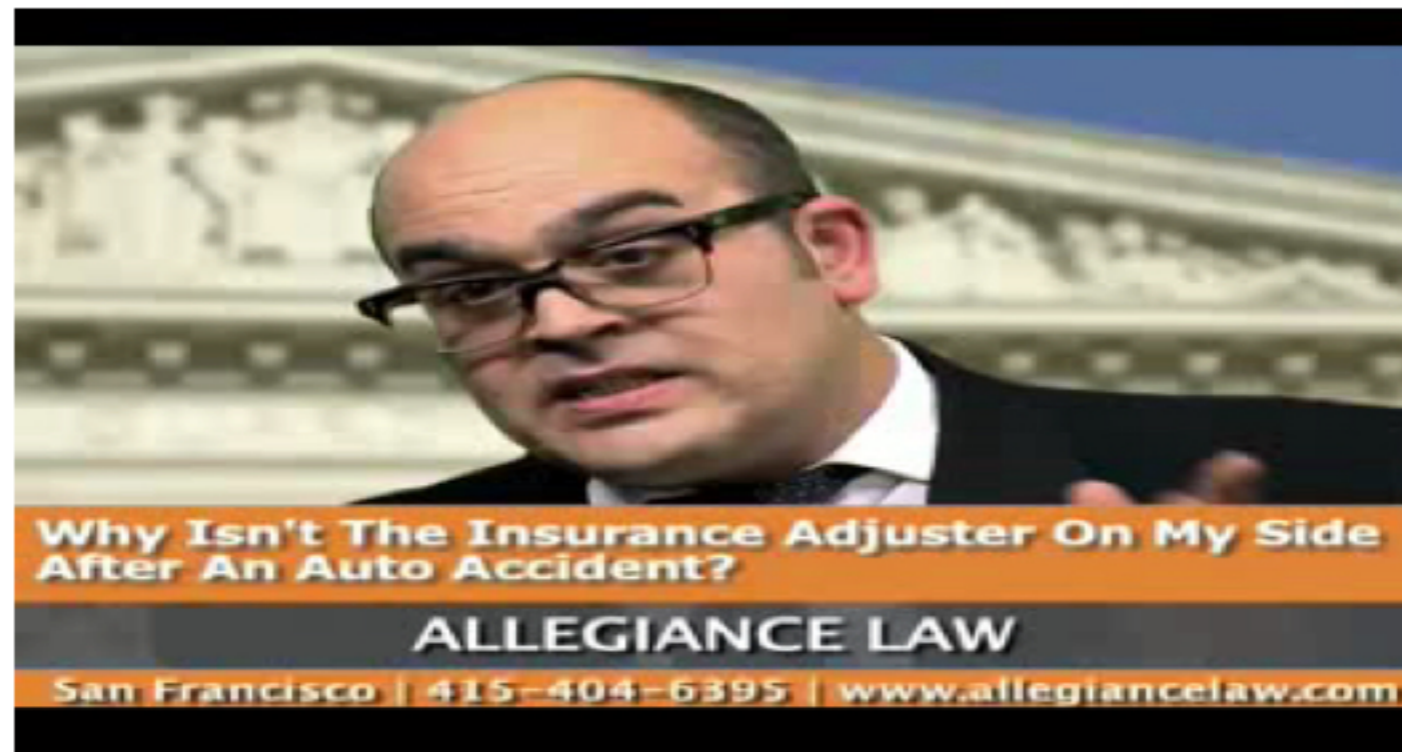
Duty of an Insurance Adjuster

- The duty of an insurance adjuster versus the duty of a personal injury attorney...



Duty of an Insurance Adjuster

- The duty of an insurance adjuster versus the duty of a personal injury attorney...



Violation of the Code of Ethics

- 69B-220.201(2) Violation:
 - (a) Violation of any provision of this rule shall constitute grounds for administrative action against the licensee.
 - (b) A breach of any provision of this rule constitutes an unfair claims settlement practice.
- In addition to Florida law, many insurance companies have policies requiring disciplinary action for ethical violations.



Violation of the Code of Ethics

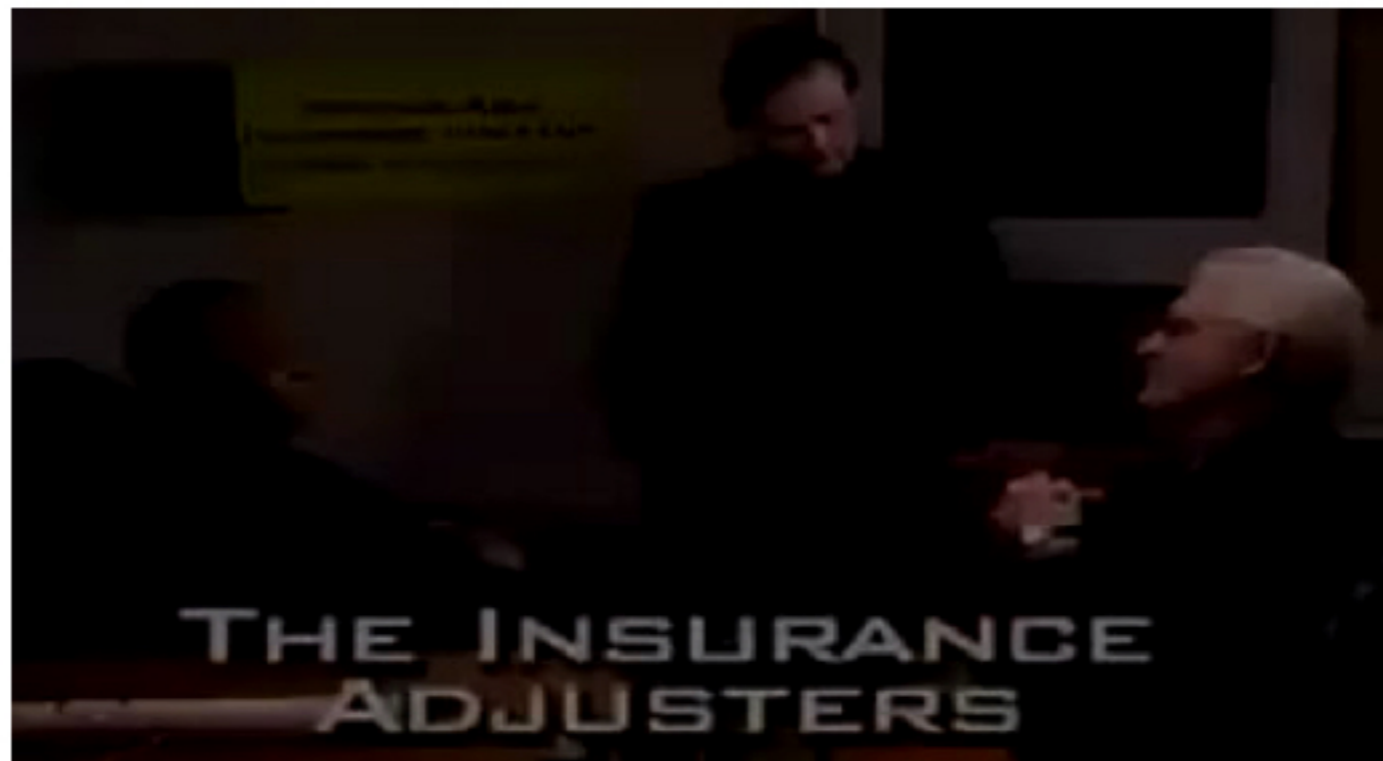
- Florida law does not recognize a cause of action arising exclusively from ethical violations.
 - Seek dismissal for failure to state a claim:
 - King v. Nat'l Sec. Fire & Cas. Co., 656 So. 2d 1338 (Fla. 4th DCA 1995): Florida law does not recognize a cause of action for simple negligence by an insured against an independent adjuster.
 - Howard v. Crawford & Co., 384 So. 2d 1326 (Fla. 1st DCA 1980): An independent adjuster does not owe a duty to the insured unless the insured is suing for an intentional tort.

Code of Ethics: F.A.C. 69B-200.201(3)

- “The following are standards of conduct that define ethical behavior, and shall constitute a code of ethics that shall be binding on all adjusters...”
 - In general, investigate, evaluate and settle cases promptly, efficiently and according to contract, without succumbing to improper outside influences.
 - Always investigate and use the facts discovered to make an impartial and fair-minded report.
 - Report all facts, not just what supports denial of coverage.
 - Work to identify the “phonies” – don’t just “rubber stamp!”
 - Reap the benefits of your investigation at trial.

Code of Ethics: F.A.C. 69B-200.201(3)

- 10 cents on the dollar...



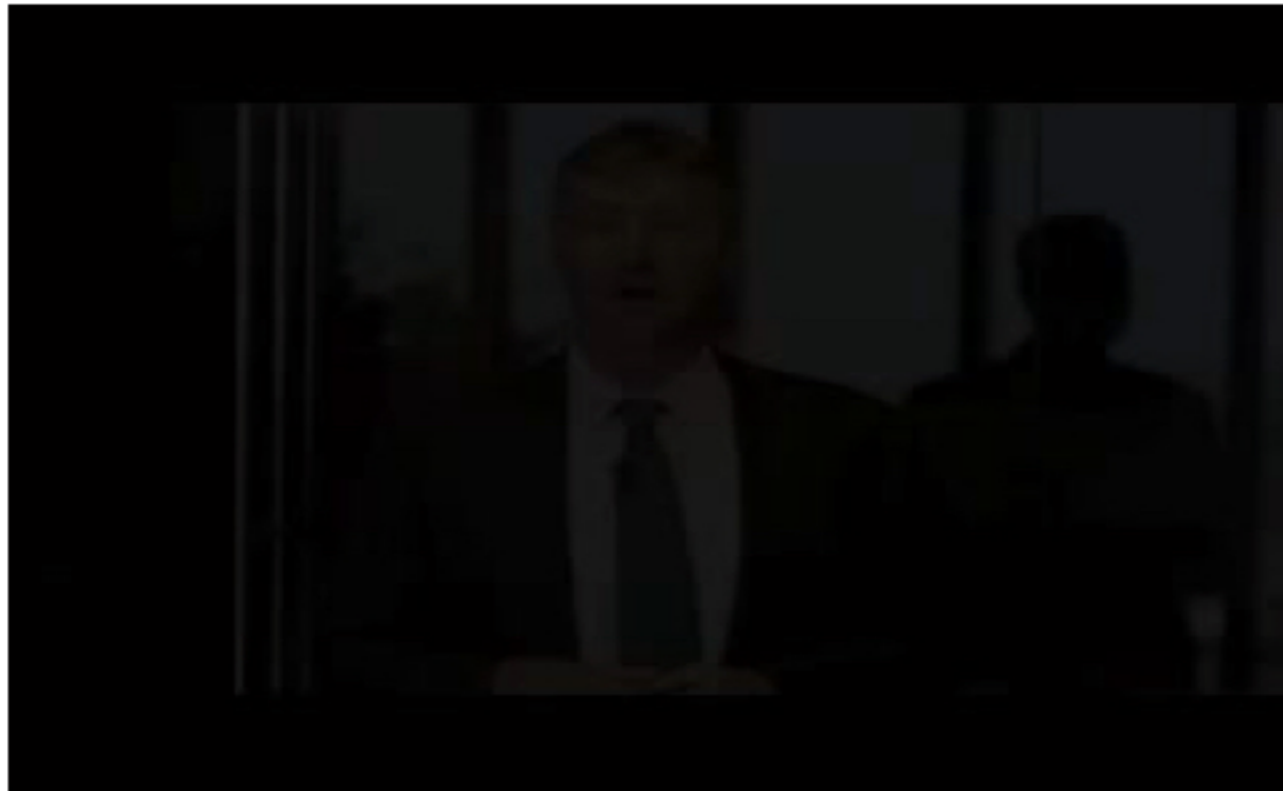
Code of Ethics: F.A.C. 69B-200.201(3)

- Don't let your own interests interfere with your duties as an adjuster.
 - Do not refer a claimant for repairs where you have an undisclosed money interest.
 - What if the interest is fully disclosed?
- An adjuster shall treat all claimants equally:
 - An adjuster shall adjust all claims in strict accordance with the insurance contract.
 - Do not act in a way that would prejudice the insured.

Code of Ethics: F.A.C. 69B-200.201(3)(o)

- Retain assistance to evaluate matters outside of your expertise to ensure there is a competent assessment of the claim.
 - Citizens Prop. Ins. Corp. v. Hamilton, 43 So. 3d 746 (Fla. 1st DCA 2010):
 - Property damage case in which the insureds argued their adjusters lacked sufficient competence to handle the claim.
 - The First DCA was persuaded:
 - Adjusters only attended a one day course on flood loss.
 - Insureds, facing devastating loss and lacking any expertise, merely filled out proof-of-loss forms.

Common Adjuster Myths



Common Adjuster Myths

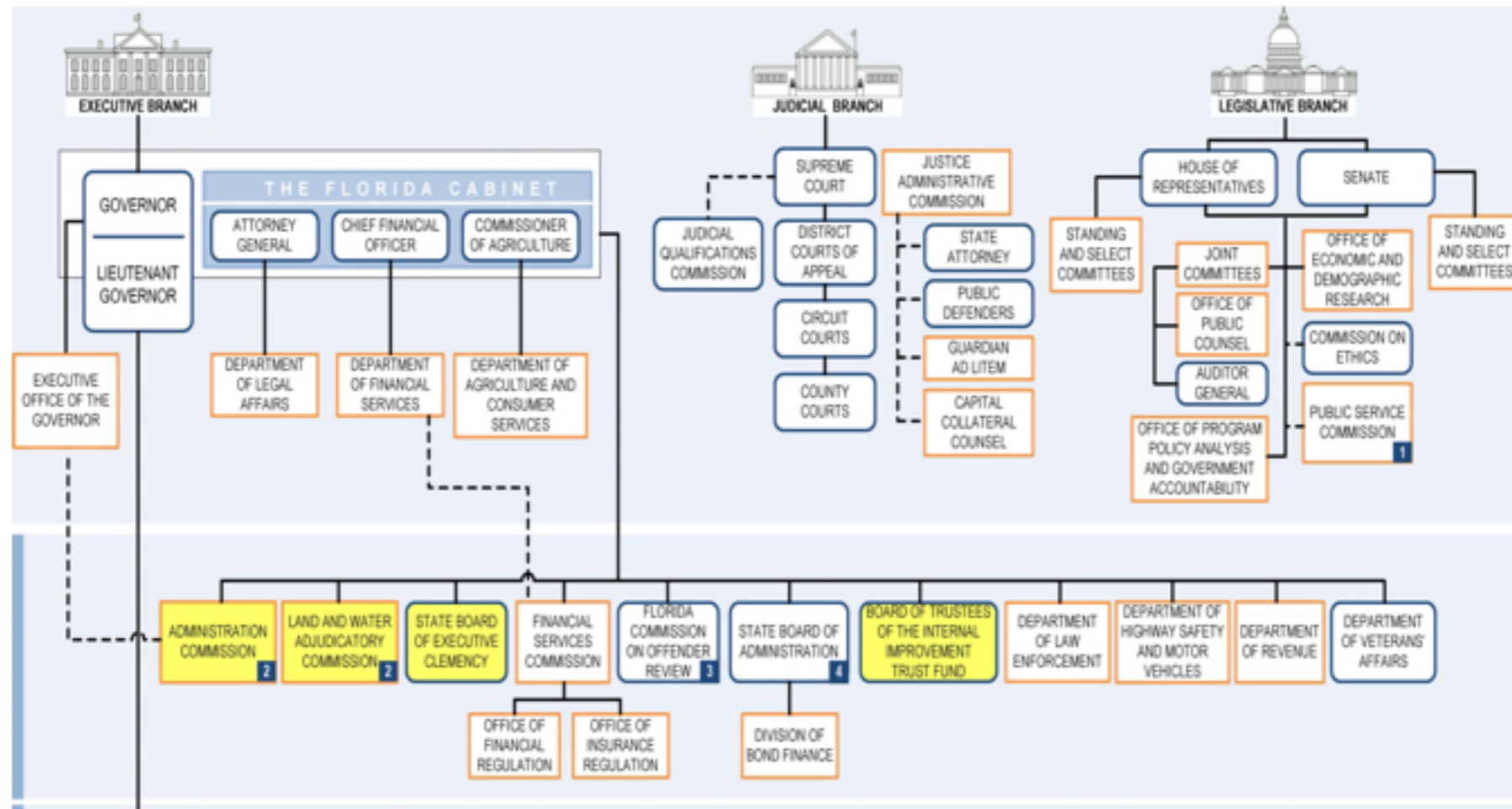
- Myths #1 “Deliberate Delay” & #2 “Requesting Unnecessary Information:”
 - Adjusters must avoid undue delay.
 - Adjusters owe a duty to act with dispatch and due diligence.
- Myth #3: “Misrepresenting Insurance Benefits:”
 - F.A.C. 69B-220.201(3)(m): Adjusters should not attempt to induce policyholders into signing a release and settlement agreement on terms less favorable than the policy and Florida law provide.

Common Adjuster Myths

- Myth #3: (cont.):
 - Do not negotiate or take a statement at a time the claimant or witness is, or would reasonably be expected to be, in shock or serious mental or emotional distress.
 - Do not conclude a settlement when the settlement would be disadvantageous to, or to the detriment of, a claimant who is a traumatic or distressed state.
 - Sibley v. Adjustco, Inc., 596 So. 2d 1048 (Fla. 1992):
 - Court rejected the statement an adjuster took from the claimant while he was heavily sedated in a hospital.
 - An independent action against the insurance carrier could be asserted on the grounds that its adjuster committed intentional bad faith acts in taking such a statement.

Regulatory Awareness Part I: Jurisdiction of Duties and Responsibilities

Breakdown of Jurisdictional Responsibilities



Chief Financial Officer

- The **CFO of Florida** a statewide constitutional officer of Florida, and is a member of the Cabinet.
- The office was created in 2002 following the 1998 reforms of the Florida Cabinet.
- The CFO is a combination of the former offices of Comptroller and Treasurer/Insurance Commissioner/Fire Marshal.
- The office heads the Florida Department of Financial Services and is responsible for overseeing the state's finances, collecting revenue, paying state bills, auditing state agencies, regulating cemeteries and funerals, and handling fires and arsons. In addition, the CFO has administrative oversight over the offices which handles banking and insurance regulation.



Florida's Current CFO

Jeff Atwater (2011-Present)

- Elected Florida's Chief Financial Officer on November 2, 2010.
- His commitment to public services began in 1993, when he was elected as the Vice Mayor of North Palm Beach. Following which he was elected to the House of Representatives in 2000, and the Florida Senate in 2002. In 2008 he was selected to serve as the Senate President.
- CFO Atwater's priorities since assuming office have been to “aggressively eliminate the fraud that increases the cost of living for Floridians, reduce regulations that inhibit job growth and economic expansion, expand his earlier efforts at fiscal transparency and governmental accountability, and protect the state's most vulnerable citizens from financial harm and abuse”



Department of Financial Services

- The **Florida Department of Financial Services** is a state agency of Florida.
- Recommended by the Constitutional Revision Commission, and passed into law by voters in 1998, the Florida Legislature carried out an amendment to the state's constitution by **merging the Department of Insurance, Treasury, State Fire Marshal and the Department of Banking and Finance into the Department of Financial Services** effective January 2003.
- The CFO, Jeff Atwater, leads the Department. He is assisted by two Deputy CFOs and a Chief of Staff.
- *See* §20.121, 624.302-624.352, Fla. Stat. (2013).

Divisions of the Department of Financial Services

The Department is made up of 14 divisions:

- Accounting and Auditing
- Consumer Services
- Funeral, Cemetery, and Consumer Services
- **Insurance Agent and Agency Services**
- Insurance Fraud
- Public Assistance Fraud
- Rehabilitation and Liquidation



- Risk Management
- Treasury
- State Fire Marshall
- Workers Compensation
- Administration
- Information Services
- Legal Services

Executive offices of the Department of Financial Services

Executive offices of the Department of Financial Services includes:

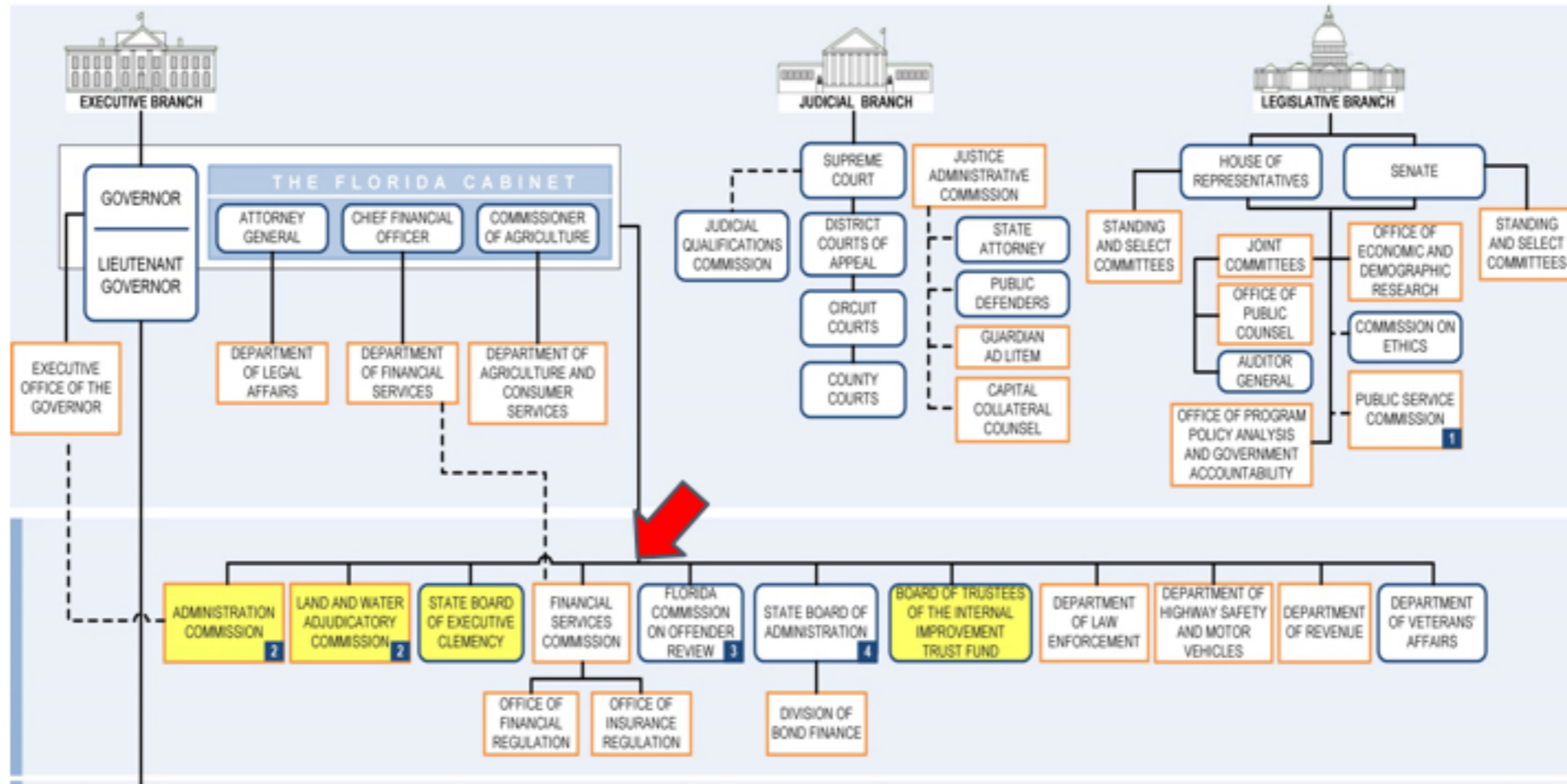
- Cabinet Affairs
- Chief of Staff
- Communications
- Program Management
- Internal Affairs and Appointments
- Inspector General
- Insurance Consumer Advocate
- Legislative Affairs
- Research and Planning



Financial Services Commission

- Body consisting of Florida's governor, Rick Scott, and Cabinet.
- The Commission appoints two officials to handle the regulation of banking, securities, and insurance. These two officials oversee the Office of Financial Regulation and the Office of Insurance Regulation.
- These two offices are administratively housed in the Department of Financial Services, but report directly to the commission.
- The purpose of the Financial Services Commission is to safeguard the public by regulating the banking, securities, and insurance industries.

State of Florida organizational chart



Financial Services Commission



Financial Services Commission

Financial Services Commission oversees:

- **Office of Financial Regulation**
- This office regulates banks, credit unions, savings associations, international bank agencies, financial service companies, and the securities industry.
- The office includes the Bureau of Financial Investigations, which functions as a criminal justice agency that conducts investigations to protect Florida's citizens against financial entities that violate state laws and rule.
- OFR's mission is "to protect the citizens of Florida, promote a safe and sound financial marketplace, and contribute to the growth of Florida's economy with smart, efficient and effective regulation of the financial services industry."



Department of Financial Services

Financial Services Commission oversees:

- **Office of Insurance Regulation**
- This office regulates the insurance industry and maintains expertise related to life and health, property and casualty, specialty lines, and other regulated insurance entities.
- It protects the public through oversight of insurance company solvency and market conduct performance.



