

FILE 2823 – October 24, 2025

POSTEMPLOYMENT RESTRICTIONS

FORMER STATE ATTORNEY OR HIS PRIVATE FIRM REPRESENTING CLIENTS IN LITIGATION INVOLVING THE STATE ATTORNEY'S OFFICE

To: Mr. Dave Aronberg (West Palm Beach)

SUMMARY:

A former State Attorney will not be in violation of Section 112.313(9), Florida Statutes, if he or his firm represents defendants in criminal cases being prosecuted by his former State Attorney's Office. Guidance is also provided regarding other post-public-employment prohibitions over which the Commission on Ethics has jurisdiction. Referenced are CEO 25-4, CEO 19-5, CEO 14-31, and CEO 10-14.

QUESTION:

Would a former State Attorney be restricted under any post-public-employment provision over which the Commission has jurisdiction from representing defendants in criminal matters being prosecuted by his former Office?

This question is answered in the negative.

In your letter of inquiry, you indicate you served as State Attorney for the Fifteenth Judicial Circuit from January 2013 until your third term concluded on January 6, 2025. You relate that, since then, you have established your own law firm, which specializes in commercial and criminal litigation. Regarding criminal litigation, you state you and your firm would like to represent defendants in criminal cases being prosecuted by your former State Attorney's Office, and you inquire whether representing clients in matters involving your former Office will place you in

violation of any post-public-employment prohibition in the Code of Ethics (Part III, Chapter 112, Florida Statutes) or any Constitutional prohibition over which the Commission has jurisdiction. You emphasize such representations will occur under a specific condition—neither you nor any other attorney from your firm will represent defendants in cases initiated by the State Attorney's office during your tenure. In other words, you and your firm will accept only those cases where charges were filed after you left office on January 6, 2025.

Initially, by their very language, two post-public-employment prohibitions do not apply as the positions they enumerate do not include that of State Attorney. First, Article II, Section 8(f)(3) of the Florida Constitution states a "public officer shall not lobby [their former agencies or governing bodies] for compensation on issues of policy, appropriations, or procurement for a period of six years after vacation of public position[.]" The positions that qualify as "public officers" for purposes of this prohibition are listed in Article II, Section 8(f)(1),¹ and the position of State Attorney is not included. And even if the position of State Attorney did qualify as a "public officer," the act of representing a criminal defendant in a legal proceeding is exempt from the reach of the Constitutional prohibition. See Section 112.3121(12)(b)4., Florida Statutes (stating the term "lobbying for compensation" as used in Article II, Section 8(f)(3) does not include "[r]epresentation

¹ Article II, Section 8(f)(1), Florida Constitution states:

For purposes of this subsection, the term 'public officer' means a statewide elected officer, a member of the legislature, a county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, an elected special district officer in a special district with ad valorem taxing authority, or a person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government.

of a person on a legal claim cognizable in a court of law, in an administrative proceeding, or in front of an adjudicatory body"). Second, Section 112.313(9)(a)3., Florida Statutes, prohibits certain public officers from returning to represent clients for compensation before their former government bodies or agencies for two years after they leave their positions, but, similar to the Constitutional prohibition, the positions to which this statute is applicable do not include State Attorneys.²

However, there is a separate post-public-employment prohibition in Section 112.313(9)(a), Florida Statutes, that requires a more detailed analysis. This prohibition is found in Section 112.313(9)(a)4., Florida Statutes, and provides in relevant part:

POSTEMPLOYMENT RESTRICTIONS: STANDARDS
OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE
EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.602 or any person having authority over policy or procurement employed by the Department of Lottery.

* * *

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

* * *

² The post-public-employment prohibition in Section 112.313(9)(a)3., by its very language, applies only to a "member of the Legislature, appointed state officer, or statewide elected officer[.]" none of which encompasses the position of a State Attorney.

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

Essentially, for those individuals who qualify as "employees" for purposes of the statute, Section 112.313(9)(a)4. places a two-year prohibition on them leaving public employment and then, within two years, representing persons or entities for compensation before their former agencies.

The term "represent," as used in the prohibition, is defined in Section 112.322(22), Florida Statutes, to include "actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client." This definition is very broad and precludes most forms of contact between a former public employee and their agency during the two-year prohibition period. See CEO 25-4 and CEO 19-5, n.9.

That being said, the prohibition in Section 112.313(9)(a)4. is only applicable to those individuals who qualify as "employees" under the criteria laid out in the statute. The question thus becomes whether the position of a State Attorney qualifies as an "employee" as defined in Section 112.313(9)(a)2.a. This is a question that we have not previously considered.

As quoted above, the term "employee," as used in Section 112.313(9)(a)2.a.(I), includes members of the "Senior Management Service as defined in s. 110.402" as well as "any person holding a position in the Selected Exempt Service as defined in s. 110.602[.]"³ Regarding Senior

³ We recognize the definition of "employee" as used in Section 112.313(9)(a)2. only pertains to those employed in the executive or legislative branch of government. The position of State

Management Service (SMS), Section 110.402(2), Florida Statutes, limits that classification "to those positions exempt from the Career Service System by s. 110.205(2) and for which the salaries and benefits are set by the department [of Management Services] in accordance with the rules of the Senior Management System." (emphasis added). Similarly, regarding Selected Exempt Service (SES), Section 110.602 limits the classification "to those positions which are exempt from the Career Service System pursuant to s. 110.205(2) and (5) and for which the salaries and benefits are set by the department [of Management Services] in accordance with the rules of the Selected Exempt Service." (emphasis added). In short, both SMS and SES classifications require two things—first, that the position is exempt from the Career Service System, and, second, that the Department of Management Services (DMS) sets the position's salary.

Applying those factors to the position of State Attorney, it fits the first criteria as it is exempt by statute from the Career Service classification. See Section 110.205(2)(x), Florida Statutes. However, it does not appear that DMS sets a State Attorney's salary. Section 29.005(1), Florida Statutes, indicates that the position of State Attorney is funded by state revenue as appropriated by general law. This is seen in the most recent General Appropriations

Attorney is created in Article V of the Florida Constitution, which concerns the judiciary, but it exercises prosecutorial powers that are executive in nature. Because of this, there is an open question as to whether a State Attorney falls within the judicial or executive branch. See Office of State Attorney for Eleventh Judicial Circuit v. Polites, 904 So. 2d 527, 532-533 (Fla. 3d DCA 2005), quoting Office of State Attorney, Fourth Judicial Circuit v. Parrotino, 628 So. 2d 1097, 1099 n.2 (Fla. 1993) (stating "[a] state attorney, while being a quasi-judicial officer, also shares some attributes of the executive"); Gray v. State, 742 So. 2d 805, 806 (Fla. 5th DCA 1999) ("The Florida Constitution gives the executive branch the responsibility and complete discretion to decide whether to charge and to prosecute a crime"). Ultimately, we do not find it necessary to opine on that question here, given that the applicability of Section 112.313(9)(a)4. to State Attorneys may be decided on other grounds.

Act, which concerns the 2025-2026 Fiscal Year (Chapter 2025-198, Laws of Florida). Section 8(1)(a) of that Act sets the salary for the position of a State Attorney in Florida. And we note as well that materials provided by you—the requestor—also reflect a State Attorney's salary is set by the Legislature through the General Appropriations Act. Because the salaries and benefits of a State Attorney are not set by DMS, but by the Legislature through the General Appropriations Act, it does not appear you meet the definition of an "employee" in Section 112.313(9)(a)2.a.(I).

However, our analysis cannot end here. The statute lists several other factors that could qualify one as an "employee" for purposes of its prohibition. Of these considerations, the only one that is relevant is found in 112.313(9)(a)2.a.(VI), which states the term "employee," as used in the statute, extends to "[a]ny person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph." In the past, when determining whether this criteria applies to a particular position, we have analyzed whether the responsibilities associated with that position are comparable to any of the position specified in the statute. See CEO 14-31 (finding an administrative law judge is not an "employee" under Section 112.313(9)(a) as they possess authority and responsibilities unique to that position). Such a comparison is not evident here, as State Attorneys possess powers and responsibilities distinct to that position alone, such as their prosecutorial discretion and singular role in the judicial process. Considering this, it cannot be said State Attorneys possess the "power normally conferred" upon an SMS or SES position, or any other position specified in Section 112.313(9)(a)2.a.

We reached a similar conclusion in CEO 10-14, which concerned whether Section 112.313(9)(a)4. applied to a former Assistant State Attorney who was seeking to represent

clients in cases against his former State Attorney's Office. We noted that DMS does not set the salaries of assistant state attorneys, and, therefore, that they fell outside the SES and SMS systems. We also noted, given the unique responsibilities of assistant state attorneys, that they were not the "equivalent" of any other position identified in Section 112.313(9)(a)2.a. Accordingly, because assistant state attorneys did not fall under any qualifying criteria in the statute, we concluded that the two-year representation prohibition in Section 112.313(9)(a)4. did not apply, and that the assistant state attorney in question could represent clients in matters involving his former Office.

Drawing this analysis to a close, we find that because you did not qualify as an "employee" for purposes of Section 112.313(9)2.a., you are not prohibited by Section 112.313(9)(a)4., from representing criminal defendants in cases being prosecuted by your former State Attorney's Office. Similarly, there is no basis under any prohibition discussed herein for other attorneys at your firm to represent such clients.⁴ Please note, though, that this opinion does not address any conflicts of interest that could arise under the Rules Regulating the Florida Bar,

⁴ Of course, you would be subject to Section 112.313(8), Florida Statutes, were you or your firm to represent clients in cases involving your former Office. This provision states:

DISCLOSURE OR USE OF CERTAIN INFORMATION--

A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public, and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

Because you indicate you and your firm will confine your criminal defense work to cases where charges were filed after you left public office, your inquiry has not given cause for concern on this front, but you should be mindful of this prohibition, nevertheless.

which creates standards of conduct outside the Commission's jurisdiction. For advice about the standards created in these Rules, please contact the Florida Bar.

Your question is answered accordingly.

cc: Mr. Dave Aronberg

JMP/gps/ks



September 18, 2025

FLORIDA
COMMISSION ON ETHICS

SEP 24 2025

RECEIVED

VIA U.S. MAIL

Kerrie Stillman, Executive Director
The Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709

Re: Request for Advisory Opinion

Dear Ms. Stillman:

I am seeking a formal advisory opinion from the Florida Commission on Ethics regarding my ability, and that of my law firm, to represent clients in criminal matters before the State Attorney's Office for the 15th Judicial Circuit.

I had the honor of serving as the State Attorney for Palm Beach County (the 15th Judicial Circuit) from January 2013 until my third term concluded on January 6, 2025. I was succeeded by my former Deputy Assistant State Attorney, Alexcia Cox, who was elected in November 2024. Upon leaving public office, I established my own law firm in West Palm Beach, specializing in both commercial and criminal litigation.

My firm and I would like to represent defendants in criminal cases being prosecuted by the State Attorney's Office for the 15th Judicial Circuit. To ensure full compliance with Florida's ethics laws, we wish to clarify that there is no ethical prohibition for me or any attorneys in my firm to undertake such representation under specific conditions.

Crucially, our representation would be strictly limited. I will not, nor will any attorney in my firm, represent any individual who was a defendant in a case initiated by the State Attorney's Office during my tenure. The only criminal cases my firm would accept are those where the charges were filed *after* I left office on January 6, 2025.

I do not believe a conflict of interest exists under these circumstances. I am not aware of any rule that would bar me or attorneys who work for me from representing clients before my former office, provided the representation is confined to new cases that arose entirely after my service as State Attorney concluded.

Therefore, I respectfully request an advisory opinion on the following question: Is there an ethical prohibition that would prevent me or other attorneys in my law firm from representing





DAVE ARONBERG LAW

criminal defendants before the State Attorney's Office for the 15th Judicial Circuit, provided that such representation is strictly limited to cases that arose after my tenure as State Attorney ended?

Thank you for your time and attention to this important matter. I look forward to your guidance.

Sincerely,

Dave Aronberg, Esq.

dave@davearonberglaw.com



Schafer, Grayden

From: Schafer, Grayden
Sent: Monday, October 6, 2025 11:23 AM
To: Schafer, Grayden
Subject: Correspondence Regarding Ethics Opinion

From: Schafer, Grayden
Sent: Tuesday, September 30, 2025 11:15 AM
To: 'dave@davearonberglaw.com' <dave@davearonberglaw.com>
Subject: Questions Regarding Ethics Opinion

Mr. Aronberg:

Thank you for speaking with me this morning about your opinion request. As we discussed, it appears the analysis in the opinion likely will hinge on how the State Attorney position is classified, specifically whether it falls within the executive branch or judicial branch, as well as whether it qualifies as either Senior Management Service (SMS) or Selected Exempt Service (SES). I have included several questions below regarding these classifications. If you would, please provide your answers in writing by replying to this email. And if you need to have any of these questions clarified, please let me know. I will be researching these question on my own as well.

1. Are you aware of any cases or laws addressing whether a State Attorney's Office falls within the executive or judicial branch? If so, please indicate them.
2. Are you aware of whether the position of a State Attorney is classified as either SMS or SES, or whether it falls outside these classification systems? If there are any relevant laws of which you are aware, please indicate them.
3. To the best of your knowledge, was your salary as State Attorney set by the Department of Management Services (DMS)? Or was it set through legislation, such as the General Appropriations Act? If you are aware of any relevant laws that address these questions, please indicate them.

I will be researching these questions on my own as well. And, as I mentioned in our conversation, I will be sending questions similar to these to the Justice Administrative Commission to see if they have any thoughts.

Thank you,

Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)-488-7864

From: Schafer, Grayden
Sent: Tuesday, September 30, 2025 11:24 AM
To: Colvin, Rip <rip.colvin@justiceadmin.org>
Cc: dave@davearonberglaw.com
Subject: Questions on Ethics Opinion Request

Mr. Colvin:

Thank you again for speaking with me this morning. As we discussed, I am working on an ethics opinion for Mr. Dave Aronberg. The opinion pertains to whether a certain post-public-office-holding statute in the Code of Ethics will apply to him as a former State Attorney. The statute only applies to individuals who were former executive/legislative branch employees classified as Senior Management Service (SMS) or Selected Exempt Service (SES). With Mr. Aronberg's consent, I contacted you to see if the JAC has any thoughts on how the position of State Attorney is classified.

I have included several questions below. If you have any thoughts regarding them, please provide them by replying to this email. And if you need to have any of these questions clarified, please let me know.

1. Are you aware of any cases or laws addressing whether a State Attorney's Office falls within the executive or judicial branch? If so, please indicate them.
2. Are you aware of whether the position of a State Attorney is classified as either SMS or SES, or whether it falls outside these classification systems? If there are any relevant laws of which you are aware, please indicate them.
3. To the best of your knowledge, is the salary of a State Attorney set by the Department of Management Services (DMS)? Or is it set through legislation, such as the General Appropriations Act? If you are aware of any relevant laws addressing these questions, please indicate them.

Thank you again,

Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)-488-7864

From: Colvin, Rip <rip.colvin@justiceadmin.org>
Sent: Tuesday, September 30, 2025 11:27 AM
To: Schafer, Grayden <SCHAFFER.GRAYDEN@leg.state.fl.us>
Cc: dave@davearonberglaw.com
Subject: RE: Questions on Ethics Opinion Request

Gray,

Good morning.

JAC's General Counsel, Cris Martinez, will take a look at your email and prepare a response.

Thanks,

Alton L. "Rip" Colvin, Jr.
Executive Director
Justice Administrative Commission
227 North Bronough Street, Suite 2100
Tallahassee, Florida 32301

Phone: (850) 488-2415
Direct Line/Cell/Text: (850) 922-0911

JAC Website: www.justiceadmin.org

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From: Dave Aronberg <dave@davearonberglaw.com>
Sent: Tuesday, September 30, 2025 12:56 PM
To: Schafer, Grayden <SCHAFFER.GRAYDEN@leg.state.fl.us>
Cc: jhoward@sa15.org
Subject: Re: Questions on Ethics Opinion Request

Hi Grayden....Thanks for following up. Here are the answers provided by Jeanne Howard, who was the executive director of my office (and still is under SA Alexcia Cox). I am copying her on this as well. Best, Dave

[EXTERNAL]

Mr. Colvin:

Thank you again for speaking with me this morning. As we discussed, I am working on an ethics opinion for Mr. Dave Aronberg. The opinion pertains to whether a certain post-public-office-holding statute in the Code of Ethics will apply to him as a former State Attorney. The statute only applies to individuals who were former executive/legislative branch employees classified as Senior Management Service (SMS) or Selected Exempt Service (SES). With Mr. Aronberg's consent, I contacted you to see if the JAC has any thoughts on how the position of State Attorney is classified.

I have included several questions below. If you have any thoughts regarding them, please provide them by replying to this email. And if you need to have any of these questions clarified, please let me know.

1. Are you aware of any cases or laws addressing whether a State Attorney's Office falls within the executive or judicial branch? If so, please indicate them. **I have always been told that we are a hybrid between the two. We were originally under the Judicial Branch. Then they removed us and set up JAC, as such we are not under DMS or the Governor nor are we under the Chief Justice.**
2. Are you aware of whether the position of a State Attorney is classified as either SMS or SES, or whether it falls outside these classification systems? If there are any relevant laws of which you are aware, please indicate them. **I believe ASAs are considered SES or at least that is what is on our Commission on Ethics financial statements. It may simply be how they categorize us using the DMS codes although we are not under DMS. Sorry but I do not know what The State Attorney is considered as an elected official but when you were an ASA it would have said SES.**
3. To the best of your knowledge, is the salary of a State Attorney set by the Department of Management Services (DMS)? Or is it set through legislation, such as the General Appropriations Act? If you are aware of any relevant laws addressing these questions, please indicate them. **A State Attorney's salary is set by the legislature through the General Appropriations Act.**

Thank you again,
Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)-488-7864

From: Schafer, Grayden
Sent: Tuesday, September 30, 2025 1:53 PM
To: 'Dave Aronberg' <dave@davearonberglaw.com>
Cc: jhoward@sa15.org
Subject: RE: Questions on Ethics Opinion Request

Thank you for this information! I will let you know if I have any other questions.