

Municipal Responsibility 101 Ethics & Conflicts of Interest

November 2018

Matt Mead

Landy Bennett Blumstein LLP





**"NOW, I HAVE TO TELL YOU, IT'S AN UNBELIEVABLY
COMPLEX SUBJECT"**

**"NOBODY KNEW ETHICS COULD BE SO
COMPLICATED"**

Disclosure & Transparency



So now you're a public official...

Now What?

- Held to a higher standard of public trust and integrity
- Lead by example
- You're spending the public's money
- You're here to represent the public's best interest; not your own
- What have I gotten myself into...!!??

Hold each other accountable!

- You are responsible for holding your fellow public officials accountable.



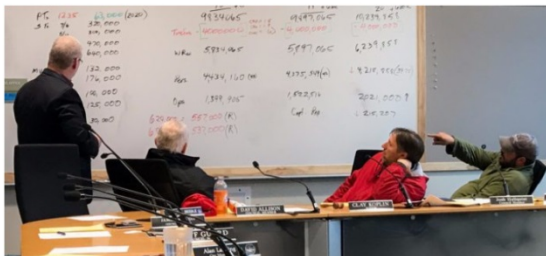
Or the voters may do it for you...



Alleged misconduct leads to recall election Nov. 7

Hallquist has option to include a statement on upcoming ballot

By Cinthia Gibbens-Stimson - September 29, 2017



Haines Assembly members survive divisive recall election

By Emily Files, KHNS - Haines - August 16, 2017



Politics

Vote on recall of Unalaska mayor moves forward

Author: Carey Restino, Bristol Bay Times-Dutch Harbor Fisherman

Updated: January 7 Published January 7



Ethical Obligations are Driven by Two Primary Sources

- **STATE LAW**

- **Title 29 – Conflicts of Interest and Public Meetings**

- AS 29.020.010 – Conflicts of Interest
 - AS 29.20.600 – Oaths of Office

- **MUNICIPAL CODE**

- **Example: City Code Chapter 2.36, Code of Ethics**

- City Code 2.36.060, General standards of Ethical Conduct
 - City Code 2.36.070-090, Conflict of Interest provisions

AS 29.20.600 – Oaths of Office

- “Before taking office a municipal official shall affirm in writing that the duties of the office will be honestly, faithfully, and impartially performed by the official.”



AS 29.20.010 – Conflicts of Interest

- (a) Each municipality shall adopt a conflict of interest ordinance that provides that
 - (1) **a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;**
 - (2) the presiding officer shall rule on a request by a member of the governing body to be excused from a vote;
 - (3) the decision of the presiding officer on a request by a member of the governing body to be excused from a vote may be overridden by the majority vote of the governing body; and
 - (4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.

Alaska Supreme Court Weighs In:

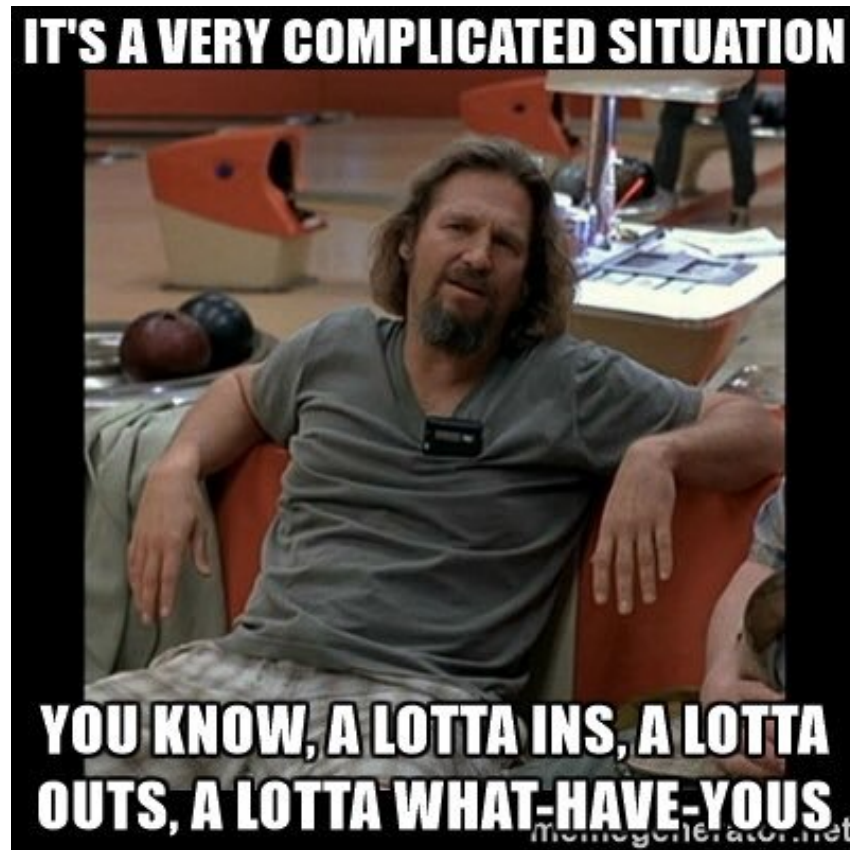
- Under common law, “the focus ... [is] on the **relationship between the public official's financial interest and the possible result of the official's action**, regardless of the official's intent.”

Griswold v. City of Homer, 925 P.2d 1015, 1026 (Alaska 1996).

Know and Follow Your Municipal Code.

- Hold yourself to a higher standard.
- Your constituents' perception of an ethics violation or a conflict of interest can be as damaging as the existence of an actual ethics violation or conflict of interest.

DO I HAVE A CONFLICT OF INTEREST??





If you think you may have a conflict,
say something!

- The worst thing you could do is to do nothing.
- Talk to staff, mayor, attorney, or someone in advance to determine whether a conflict exists.
- Despite advice you may receive from other sources, your municipal governing body retains authority to determine whether a conflict exists.



In small town Alaska, conflicts of interest a tricky subject

By **June Leffler, KSTK - Wrangell** - October 19, 2018

Like 10

Tweet



Figuring Out If You Have a Conflict of Interest.

- Do you have competing interests?
 - Personal?
 - Familial?
 - Financial?
- Do you feel conflicted?



What if I Have a Conflict? – Step 1

- Put it on the record.

“Madame Chair, members of the Council, I believe I have a conflict of interest in the Council’s consideration of Resolution 2018-34 because my brother is the owner of the company being considered for the road maintenance contract.”

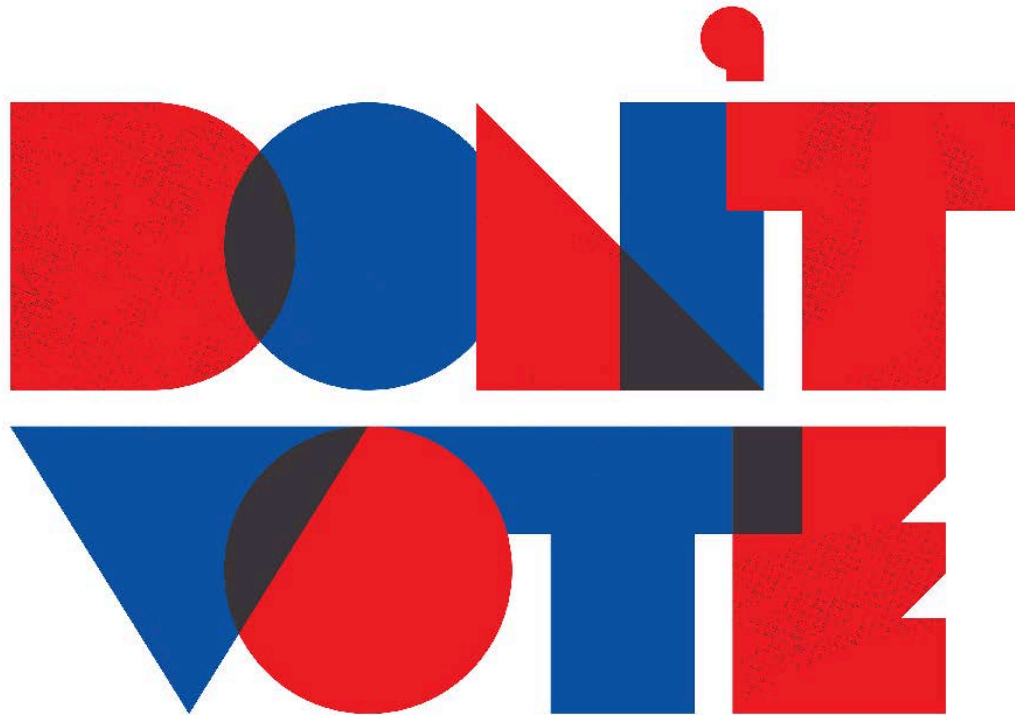
What if I have a conflict? – Step 2



What if I Have a Conflict? – Step 2 (cont'd)

- **Do not** participate in the matter being considered.
- **Do not** influence the discussion.
- **Do not** attempt to directly or indirectly influence the municipal body or an individual's consideration of the matter.

What if I Have a Conflict? - Step 3

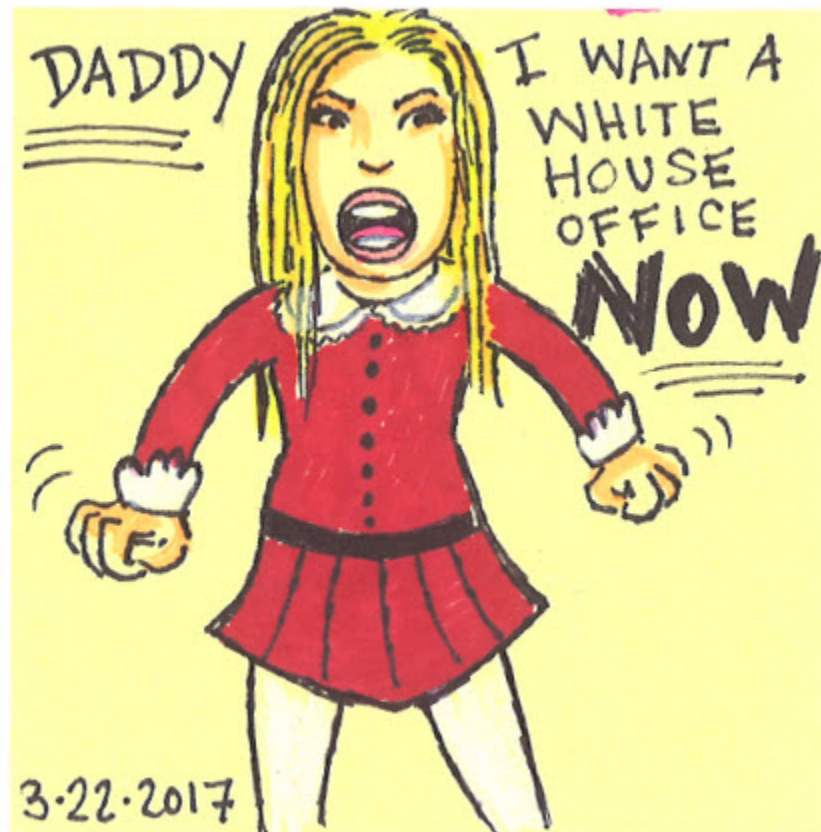


No, really. **DO NOT** vote on any matter where you have a conflict.

Conflict of Interest: DUAL OFFICES?

- Generally, dual-office holding is prohibited by basic principles of municipal law.
- A City of North Pole charter provision prohibiting dual-office holding, and requiring the removal of a city employee (police officer) when that employee was elected to the city council, was valid and constitutional.
-Acevedo v. City of North Pole, 672 P.2d 130 (Alaska 1983).
- **CHECK YOUR CODE** to see if it prohibits you from holding dual offices.

Conflict of Interest: NEPOTISM?



COI: Nepotism (cont'd)

- Nepotism is generally defined as an official granting favors to family members, specifically - jobs.
 - **Example**: a Mayor hires their child to be the Mayor's Chief of Staff, and hires their spouse to be the Director of Government Affairs.
- Alaska law prohibits legislators and executive branch employees from engaging in nepotism.
 - AS 24.60.090; AS 39.90.020
 - What about your municipal code???

COI: Nepotism (cont'd)

- Nepotism or the appearance thereof can be a tricky issue in Alaska.
 - Alaska law doesn't directly address the issue of nepotism in municipal government.
 - Many of our Alaskan municipal communities are small, rural, and isolated.
 - Our work may require us to work alongside immediate and distant family members in order to complete our official duties.
- **CHECK YOUR MUNICIPAL CODE** to see if it addresses nepotism.

Conflict of Interest: Commercial Activity.



COI: Commercial Activity (cont'd)

City Code Example 2.36.070. Public officials should not:

- A. Request, use or permit the use of city's property or equipment, or of a public official's or employee's city time for non-city purposes, unless that use is available to the general public on the same terms or is approved by the mayor;
- B. Request, use or permit the use of city property or equipment, or of a public official's or employee's city-compensated time to conduct campaign activity unless that use is available to the general public on the same terms;
- C. Use information within the public official's knowledge or purview concerning the property, government or affairs of the city to advance the personal interest of the public official or the official's immediate family;
- D. Accept any form of gift, loan or gratuity in exchange for the performance of the public official's duties other than the compensation and benefits provided by the city, except as provided in City Code [2.36.080](#)(B);

COI: Commercial Activity (cont'd)

- E. Engage in business with the city, or be a party to the purchase of goods or services for the use of the city from any person or organization in which the public official or a member of the official's immediate family has a substantial financial interest, unless the financial interest is first disclosed, and the transaction or purchase is approved in advance by the city council or secured through competitive bidding;
- F. Take any action to influence the city's solicitation of any bid or proposal from a person or organization in which the public official or a member of the official's immediate family has a substantial financial interest;

COI: Commercial Activity (cont'd)

- G. Take any action in the council member's capacity as a public official in regard to any contract with the city in which the public official or a member of the official's immediate family has a substantial financial interest, or in regard to any sale of land, material, supplies or services to the city or to a contractor supplying the city, if the public official or a member of the official's immediate family has a substantial financial interest in such sale, unless the financial interest is first disclosed, and the sale or contract is secured through competitive bidding or is approved in advance by the city council;
- H. Represent, advise or assist a person or organization for pay or other benefit to the public official in any matter involving the public official's public duty.

Conflicts of Interest: Gifts, Loans and Travel.



COI: Gifts, Loans, and Travel (cont'd)

City Code 2.38.080.

- A. Public officials of the city shall not request or receive a gift, loan or trip, personally or for the official's immediate family members, if:
 - 1. That gift, loan or trip would tend to influence the public official in the discharge of his or her official duties; or
 - 2. The public official may in the foreseeable future be involved in any official action directly affecting the donor or lender.

COI: Gifts, Loans and Travel (cont'd)

- B. Exceptions. This section shall not apply in the case of:
 - 1. Occasional nonmonetary gifts, not to exceed a total value of \$250.00 from any single donor in a single calendar year;
 - 2. An award publicly presented in recognition of public service;
 - 3. A commercially reasonable loan made in the ordinary course of business by an institution authorized to engage in the making of such loans, or a loan available to the public official on the same terms as to the general public;

COI: Gifts, Loans and travel (cont'd)

- 4. A political campaign contribution; provided, that the contribution is reported and used in the manner required by the applicable federal, state and local law;
- 5. Discounts that are generally available to the public or to a large class of persons to which the public official belongs;
- 6. Food, wildlife products and materials that are generally given or shared locally as a part of traditional cultural activities;
- 7. Ordinary hospitality in a private home; or
- 8. Travel, subject to the following restrictions:
 - a. All travel accepted must be for furtherance of a valid public purpose, and
 - b. All travel accepted must be approved in advance by the mayor in consultation respectively with the city council.

Unique Ethics Issues Triggered by Travel

- Whenever and wherever you travel, you are a representative of your community and of your municipal government.
- Travel should not be treated like a vacation.
- Do not extend your trip at the municipality's expense.
- If your municipal code permits you to consume alcohol while traveling, consume responsibly!

Permissible Travel or Ethics Violation?

Wonkblog

Treasury secretary's wife boasts of travel on government plane, touts Hermes and Valentino fashion

By **Damian Paletta**

August 21, 2017



Louise Linton, wife of Treasury Secretary Steven Mnuchin, has made a few headlines during her time in the national spotlight. (Video: Elyse

Permissible Travel or Ethics Violation?



The screenshot shows a mobile phone interface with a Verizon signal, 2:01 PM time, and 84% battery. The browser address bar shows 'alaskapublic.org'. The page features the Alaska Public Media logo (a stylized 'AK' with 'ALASKA PUBLIC MEDIA' text below it) and a search icon. The main headline reads 'Wasilla Councilman Menard Target of Recall Effort'. Below the headline, it says 'By Ellen Lockyer, Alaska Public Media - October 3, 2011'. There are two social media buttons: 'Like 0' and 'Tweet'. The article text begins with 'Wasilla city councilman Steve Menard is the target of a recall effort. The city clerk has approved an application for a recall election sponsored by an organization called the Conservative Patriots Group.' A subsequent paragraph states: 'Menard, whose term ends in 2013, was in Sitka for the Alaska Municipal League meeting in August. Menard made headlines when he left behind a wrecked hotel room. The hotel charged the city \$350 to fix the damage,'.

Wasilla Councilman
Menard Target of Recall
Effort

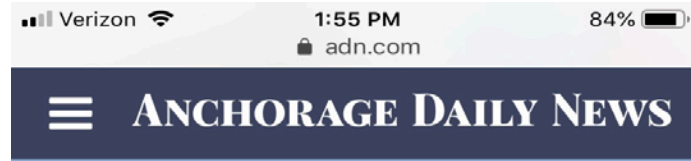
By Ellen Lockyer, Alaska Public Media - October 3, 2011

Like 0 Tweet

Wasilla city councilman Steve Menard is the target of a recall effort. The city clerk has approved an application for a recall election sponsored by an organization called the Conservative Patriots Group.

Menard, whose term ends in 2013, was in Sitka for the Alaska Municipal League meeting in August. Menard made headlines when he left behind a wrecked hotel room. The hotel charged the city \$350 to fix the damage,

Permissible Travel and/or Gifts, or Ethics Violation?



Politics

North Slope Borough funded basketball camp for mayor's grandkids, records show

✍ Author: [Nathaniel Herz](#)

🕒 Updated: September 28, 2016

📅 Published July 23, 2015



The North Slope Borough paid \$8,400 to fly five of Mayor Charlotte Brower's grandchildren from Barrow to a basketball camp in California last August, according to borough documents.

The documents, contained in a response to an Alaska Dispatch News records request, show Brower's signature approving the use of borough funds for three of her grandchildren's fees and flights for the trip to the camp in Santa Barbara.

The records also detail tens of thousands of

Permissible Gifts or Ethics Violation?



Politics

North Slope Borough mayor's office dispensed over \$800K in gifts, violated donation policy

 Author: [Nathaniel Herz](#)

 Updated: September 28, 2016

 Published August 15, 2015



North Slope Borough Mayor Charlotte Brower's office has dispensed more than \$800,000 in gifts of public funds to local organizations, sports teams and individuals since she took office in 2011, according to borough documents.

The documents cover only one borough account from which donations were made. Still, they include more than \$100,000 for private club basketball teams not associated with popular public high school sports. One \$10,000 contribution went to a team that served food at a bill signing last year attended by then Gov.

Conflict of Interest: Voting.

City Code 2.36.090

- A. **The mayor** shall declare to the council any substantial financial interest he has in an official action.
- B. **A member of the council or other city board or commission** shall declare any substantial financial interest the member or a member of their immediate family has in an official action and ask to be excused from a vote on the matter.

COI: Voting (cont).

- C. **The presiding officer** shall rule on a request by a member of a city body to be excused from a vote.
- D. **The decision of the presiding officer** on a request by a member of a city body to be excused from a vote **may be overridden by the majority vote of the body's membership.**

Conflicts of Interest: Additional Provision Options



Can your municipality have its cake AND eat it, too?

COI: Additional Provision Options (cont'd)

- Your municipality can define what “substantial financial interest” means.
- **City Code 2.36.030:** “Substantial financial interest” means a financial interest that is of a magnitude that it would be the primary reason for a person’s act to benefit himself or herself or a member of his or her immediate family. A substantial financial interest does not include a financial interest of a type that is generally possessed by the public or by a large class of persons to which the public official belongs.

COI: Additional Provision Options (cont'd)

- “Substantial Financial Interest” means “a direct or indirect pecuniary or material benefit, privilege, interest, or contractual relationship accruing as a result of the Borough’s consideration of a matter.”
- Define “financial interest.”

COI: Additional Provision Options (cont.)

- Consider defining “financial interest” to include **any** pecuniary interest:
 - a. Of a member of a official’s immediate family or employer.
 - b. In an entity in which an official or a member of the official’s immediate family has an ownership interest, or is a director, officer, or employee.

COI: Additional Provision Options (cont'd)

A determination that a public official has a substantial financial interest in a matter shall be considered on a case-by-case basis evaluating these factors:

- a. Whether the financial interest is a substantial part of the matter under consideration.
- b. Whether the financial interest directly and substantially varies with the outcome of the matter under consideration.
- c. Whether the financial interest is known and not dependent on factors beyond the matter.
- d. Whether the financial interest is monetarily significant.
- Whether the financial interest is beyond the type typically possessed by the public at large or a large class of persons to which the borough officer belongs.

Conflicts of Interest: Additional Provision Options (cont.)

- Substantial financial interest does not include:
- a. A financial interest of such limited magnitude that it would not influence an average, reasonable person.
- b. A financial interest in which the outcome of a decision would have only an insignificant or conjectural effect.
- c. A financial interest which is obtained through a competitive process.

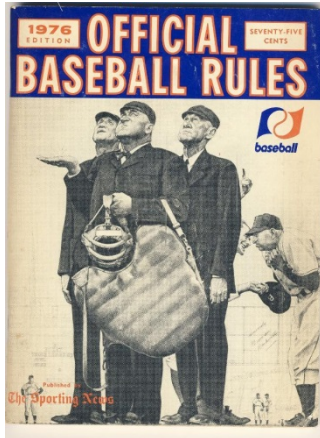
COI: Additional Provision Options (cont.)

- Should the conflicted city council member get to **participate** in discussions?
- Should the conflicted city council member get to remain seated with the other members **during the discussion**?

Quasi-Judicial Actions

- Variances
- Conditional use permits
- Personnel Committee hearings
- Ethics Committee hearings
- Elevated administrative and use permits
- Decisions that have a direct affect on the rights of an individual or entity
- Decisions that apply existing law rather than action making new law
- Requires findings of fact based on evidence presented
- Absolutely no “ex parte contact” in Quasi-judicial matters

What Hat?



- Legislative?
 - Review and revise Land Development Code.
 - Review comprehensive plan and proposed rezoning.



- Quasi-Judicial (adjudicatory)?
 - Hear and decide permit applications requiring a hearing.
 - Hear and decide all permits appealed from City Planner's decision.

'Field of Dreams' baseball complex gets go-ahead at movie site in Dyersville

- Foul Play - ???
- Was rezone legislative or quasi-judicial?
- Why does it matter?
 - Standards of legal review



Field of Dreams

- City council was acting in legislative function when it decided to rezone agricultural land to commercial land in order to facilitate the development of baseball and softball complex, and thus, judicial review was limited to whether the decision to rezone was fairly debatable.
- Council was not sitting to determine adjudicative facts to decide legal rights, privileges, or duties of a particular party based on that party's circumstances, but council weighed all information, reports, and comments available in order to determine whether rezoning was in the best interest of the city.

Rezone: Legislative Function

- The council's decision to rezone the *Field of Dreams* site was supported by the facts and was not arbitrary, capricious, or unreasonable.
- The council made its decision after a full and lengthy consideration of the overall welfare of the city.
- The city council investigated water, sewage, traffic, crime, and water runoff. It received economic reports detailing increased jobs and revenue for the state and city.
- Each member of the city council attended meetings, read reports, asked questions, participated in public hearings, listened to the opinions of community members, and considered the economic benefits and impact on the city.

Impartiality: No Prejudgment

- ❖ Start with and keep an open mind.
- ❖ You must not have any strongly held or unwavering beliefs or notions relevant to the facts at issue.
- ❖ Your impartiality matters: decisions can be overruled because a commission member told applicant he was “just wasting his time” talking.



- **EXAMPLE:** A planning commissioner shall be impartial in all decisions, both in fact and in appearance. No planning commissioner may engage in ex parte contact with any person interested in an appeal concerning the appeal either before or after the appeal hearing.

Ex Parte Contact



Questions?

Matt Mead
Landye Bennett Blumstein LLP
701 W. Eighth Ave, Suite 1200
Anchorage, AK 99501
(907) 868-9225

mattm@lbblawyers.com www.lbblawyers.com

