

What Would (Should) You Do? Responding to First Amendment Auditors, Sovereign Citizens, and Public Workplace Disruptions

Employment, Ethical, and Legal Requirements Under New Jersey Law

Prepared for Municipal Clerk's Association of NJ, Inc

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What Would (Should) You Do?

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What Would (Should) You Do?

Thank you's

-Nancy

-Kim

-E-board, Laura

-You

-Mom

-John Quinones

-AI (Discuss MCANJ Work)



“ What Would (Should) You Do? Ethical responses to First Amendment Auditors, Sovereign Citizens, and Public Workplace Disruptions ”

You are working on an OPRA response that has to be sent out today, pulling a vital record for the elderly citizen at the window, or getting the meeting agenda packet prepared and ready to send out...*and then they walk in*. Perhaps they are brandishing a camera and making provocative gestures and statements. Perhaps they yell out for your immediate attention, irate they have to wait their turn or until you finish what you are working on. Perhaps they just walk in hot, grow angrier and angrier, and demand your name while gesticulating, maybe even saying you work for them or you do not have any authority over them. No, it's not Candid Camera. Sorry, John Quinones is not going to walk out and come to your rescue from this ridiculous exchange, saying it is part of his TV program, What Would You Do? But still, What *Should* You Do? What are your ethical and employment obligations when confronted by a First Amendment Auditor, Sovereign Citizen, or workplace disruptions? This educational program will sanely guide you through the insanity and teach you how to ethically and professionally respond to those who think they are the king or queen of the universe. (TW story)

A three-way balance: public rights, lawful limits, professional conduct.

01

Honor Public Rights

The public has a common law right to videotape municipal proceedings and access government records under OPRA.

02

Enforce Lawful Limits

Clerks may impose reasonable, content-neutral restrictions and call law enforcement when conduct becomes disorderly, obstructive, or trespass.

03

Act Professionally

The clerk's own conduct is governed by ethics law, the civil service 'conduct unbecoming' standard, and tenure protections requiring good cause.

The overarching imperative: de-escalation, professionalism, and documented compliance; but above all BE SAFE.

The Municipal Clerk's Dual Role

A central, multifaceted position in local government.

Under N.J.S.A. 40A:9-133, the municipal clerk is the secretary of the municipal corporation, custodian of records, secretary to the governing body, chief administrative officer for elections, and — critically — the statutory custodian of government records.

N.J.S.A. 47:1A-1.1 expressly designates the municipal clerk as the custodian of a government record under OPRA.

This dual role — serving the governing body AND the public's right of access — creates the fundamental tension the clerk must navigate when confronted by auditors or other challenging visitors.

Sources: N.J.S.A. 40A:9-133; N.J.S.A. 47:1A-1.1

THE CLERK WEARS MANY HATS

- Secretary of the municipal corporation
- Custodian of minutes, books, deeds, contracts
- Secretary to the governing body
- Chief administrative officer for elections
- Chief registrar of voters
- Statutory custodian of government records (OPRA)

Tenure & Statutory Protections

The Legislature contemplated contentious public encounters.

Removal Only for Good Cause

Tenured clerks hold office during good behavior and efficiency. Removal requires written charges with specificity after a formal hearing.

N.J.S.A. 40A:9-133.7 • N.J.S.A. 40A:9-134

Municipal Duty to Defend

The municipality must provide the clerk means to defend legal actions arising from lawful exercise of official duties — with limited disciplinary and criminal exceptions.

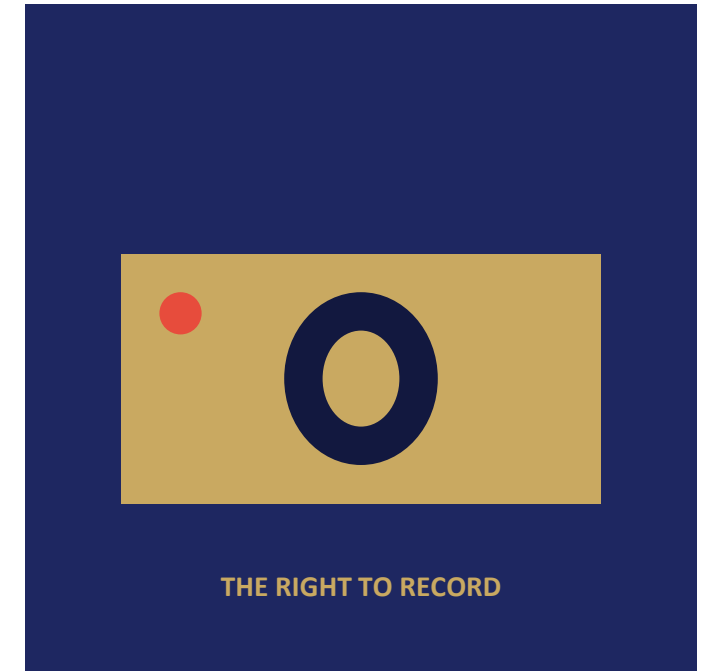
N.J.S.A. 40A:9-134.1

Who Are First Amendment Auditors?

First Amendment auditors are individuals — typically filming their own interactions with government employees — who deliberately test whether public officials respond lawfully to recording in government spaces.

Their activities invoke well-established legal rights under New Jersey law. The clerk's job is not to debate that framework, but to continue performing official duties calmly and within it.

Even hostile, provocative, or seemingly performative behavior is often legally protected. The key question is whether the conduct has crossed from expression into disruption.



CASE LAW

Tarus v. Borough of Pine Hill

189 N.J. 497 (2007) • Supreme Court of New Jersey

HOLDING

“Subject to reasonable restrictions, members of the public have a common law right to videotape municipal proceedings in New Jersey.”

The court noted that “video cameras provide the most accurate and effective way of memorializing local democracy in action.”

Grounded in New Jersey's strong public policy favoring open government.

Reinforcing Authority

Ramos v. Flowers and the New Jersey Constitution.

APPELLATE DIVISION

Ramos v. Flowers

429 N.J. Super. 13 (2012)

“A citizen's right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment.”

CONSTITUTIONAL BASIS

N.J. Const. Art. I, ¶ 6

Liberty of Speech and of the Press

“Every person may freely speak, write and publish his sentiments on all subjects...”

This state-level guarantee reinforces the federal First Amendment and applies throughout New Jersey's public spaces.

When Restrictions Are Permissible

The right to record is real — but not absolute.

Public bodies may impose guidelines that are:



Reasonable

Addressing camera placement, device count, operator positioning, noise, and spatial requirements.



Content-Neutral

Neutrally adopted and administered — not targeting viewpoint, speaker, or message.



Narrowly Scoped

Limited to the stated purpose of preventing disruption — not broader control of access.

⚠️ UNLAWFUL MOTIVATIONS

Restrictions motivated by political animus, personal distrust, or hostility toward the auditor's message are unlawful.

Public vs. Restricted Space

Where the camera may roll depends on the forum.

PUBLIC SPACE

The clerk's public counter

Waiting areas and public counters where citizens transact business are analogous to public meeting space.

These areas carry a strong presumption in favor of permitting recording. Do not block or obstruct the camera here.

RESTRICTED / NON-PUBLIC

Back office, server room, staff areas

Restricted workspace areas behind the counter, server rooms, and private offices are non-public forums.

Recording may be restricted through a content-neutral policy — but the restriction must be written, posted, and applied consistently.

Responding to an Auditor: Do This

Five actions the clerk should take, in order.

01

Stay Calm & Professional

Make no effort to block or impede the camera.

02

Keep Doing Your Job

Continue official duties without alteration solely because of recording.

03

State Restrictions Calmly

Cite specific, written, neutrally-applied restrictions — without debating legitimacy.

04

Do Not Threaten Arrest – Color of Law

Never threaten arrest or removal based solely on lawful recording in a public area.

05

Document the Interaction

Write down date, time, behavior observed, and every step of your response.

Sovereign Citizens: An Overview

Pseudo-legal tactics meant to harass, intimidate, or entrap.

Sovereign citizens assert they are not subject to government jurisdiction. They frequently deploy pseudo-legal documents — including fictitious ‘commercial liens,’ ‘common law writs,’ ‘notice of liability’ documents, and demands that clerks take personal oaths — to harass or legally entrap public employees.

New Jersey has no sovereign-citizen-specific statute. But the existing legal framework gives the clerk clear guidance on how to respond.

KEY PRINCIPLE

The clerk is NOT required — and should not attempt — to engage in legal debate. The clerk has no authority to adjudicate jurisdictional arguments. Use this as your legitimate reason for not engaging.

Common Tactics to Recognize

Familiar patterns signal this is a scripted encounter.

Fictitious Filings

“Commercial liens,” “common law writs,” “notice of liability” documents
— drafted to look official.

Jurisdictional Denial

Verbal claims that the individual is not subject to New Jersey or federal law.

Do not engage, even though they drove over on public roads and would expect first responders to answer

Demands for Personal Oaths

Demands the clerk personally sign, swear, or acknowledge individual liability.

Excessive Legal Jargon

Streams of quasi-legal terminology designed to confuse, stall, or entrap.

Your work does not involve blah blah

The Appropriate Response

Ministerial, neutral, documented — and escalate when needed.

1

Accept filings neutrally

Follow normal filing procedures. The clerk is not responsible for the legal content of documents; that is for the courts.

2

Never sign personal oaths

Decline calmly. Explain you are not authorized to take such action. No further explanation is necessary.

3

Keep a contemporaneous record

Write down exact demands, responses, and timestamps during or immediately after the interaction.

4

Escalate to municipal counsel

Unusual filings of legal significance are for the municipal attorney — not the clerk — to evaluate.

5

Contact law enforcement

Call police if the individual becomes threatening, refuses to leave after being lawfully told, or physically disrupts operations.

STATUTE

N.J.S.A. 2C:18-3

Defiant Trespass — Petty Disorderly Persons Offense

“A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by actual communication to the actor.”

WHAT THIS MEANS FOR THE CLERK

The clerk's oral direction to leave — documented in writing immediately after — constitutes the required ‘actual communication.’

When Conduct Crosses the Line

From protected expression into unlawful disruption.

When behavior in the clerk's office moves beyond protected expression into actual disruption, several New Jersey criminal statutes provide the legal basis for law enforcement intervention.

N.J.S.A. 2C:33-2

Disorderly Conduct

Fighting, threatening, or tumultuous behavior; loud or abusive language in a public place. “Public” includes places of business.

N.J.S.A. 2C:33-8

Disrupting Meetings

A disorderly persons offense to disrupt any lawful meeting, procession, or gathering by an act tending to obstruct it physically.

N.J.S.A. 2C:18-3

Criminal Trespass

Remaining in a place after notice against trespass has been communicated — a petty disorderly persons offense.

Disorderly Conduct, Unpacked

N.J.S.A. 2C:33-2 defines three distinct categories.

Tumultuous Behavior

Fighting, threatening, or violent conduct — or any act serving no legitimate purpose that creates a hazardous condition.

Mens rea: Purpose to cause public inconvenience, annoyance, or alarm, or reckless disregard.

Offensive Language

Unreasonably loud or offensively coarse or abusive language addressed to any person present in a public place.

Mens rea: Purpose to offend sensibilities, or reckless disregard of the probability of doing so.

Disrupting Gatherings

Behavior that disrupts or causes a disturbance at a public gathering or event.

Mens rea: Purpose to disrupt, or knowledge that behavior will cause disturbance.

“Public” expressly includes places of business — N.J.S.A. 2C:33-2

Escalation Protocol

A five-rung ladder — climb only as behavior demands.

1

De-escalate first

Calm, even-toned communication. Acknowledge concerns without conceding legal points.

2

Deliver a clear warning

Advise the individual that continued behavior will prompt law enforcement. Write down the warning.

3

Contact law enforcement

If disruption continues, call police. Articulate the specific conduct and applicable statute.

4

Do not confront physically

The clerk has no law enforcement authority. Never attempt physical restraint or removal.

5

Document everything

Written incident report: date, time, statements, demands, responses, outcome.

The Local Government Ethics Law

Statewide standards that govern every official interaction.

The New Jersey Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., establishes a statewide Code of Ethics administered by the Local Finance Board.

The Act's purpose is to ensure that standards of ethical conduct for local government officers and employees are “clear, consistent, uniform in their application, and enforceable on a Statewide basis.”

Municipal clerks, as “local government officers” under N.J.S.A. 40A:9-22.3, are fully subject to this code.

CORE STATUTE

N.J.S.A. 40A:9-22.1

Administered by the Local Finance Board, with coverage of all local government officers and employees — municipal clerks included.

Four Core Ethical Duties

The conduct expected of a clerk in every public-facing interaction.

1 No weaponizing the office

Do not use position to retaliate against an auditor, deny OPRA requests in bad faith, or target First Amendment activity.

2 Independence of judgment

Do not allow animosity or pressure — including from elected officials — to compromise how duties are performed.

3 No conflicts of interest

Process OPRA requests and public interactions uniformly — without political or personal favoritism.

4 No misuse of information

Do not share non-public information acquired officially (e.g., an auditor's address via OPRA) in ways designed to harm that individual.

Conduct Unbecoming a Public Employee

N.J.A.C. 4A:2-2.3(a)(6) — “an elastic phrase.”

SUPREME COURT OF NEW JERSEY

“Any conduct which adversely affects the morale or efficiency of the bureau, or which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.”

Karins v. City of Atlantic City, 152 N.J. 532 (1998)

AT RISK OF DISCIPLINE

Arguing, escalating, using profane language, physically interfering with recording, or retaliating — even in response to provocation.

PROTECTED

Acting professionally, following lawful procedures, and de-escalating effectively — supported by tenure and a duty to defend.

Progressive Discipline & Tenure

Good-faith conduct carries meaningful protection.

Progressive discipline principles generally apply to public employees. Minor infractions in a first incident — particularly where an employee has no prior discipline record — are unlikely to warrant termination.

CASE REFERENCE

Thurber v. City of Burlington, 191 N.J. 487 (2007)

A six-month suspension — not termination — was appropriate for a court administrator with an unblemished record.

REMEMBER

If a disciplinary proceeding is dismissed or finally determined in the clerk's favor, N.J.S.A. 40A:9-134.1 requires reimbursement of reasonable defense costs.

Workplace Safety Obligations

PEOSHA — N.J.S.A. 34:6A-25 et seq.

The NJ Public Employees' Occupational Safety and Health Act declares the State's policy that public employees be provided with “safe and healthful work environments free from recognized hazards.” This obligation falls on the municipality as employer.

- 1 Define prohibited conduct — threats, abusive language, interference
- 2 Establish a clear incident reporting chain
- 3 Train staff on de-escalation, threat recognition, and documentation
- 4 Physical security — counter design, panic buttons, cameras in public areas
- 5 Specify when and how to contact law enforcement

Key Takeaways

Calm professionalism, anchored in a written protocol, is the clerk's single most effective tool.

NEVER

block recording in public areas of the office.

NEVER

argue about the legal validity of an individual's belief system.

NEVER

call law enforcement solely because someone is filming or asking questions.

ALWAYS

maintain calm professionalism and de-escalate first.

ALWAYS

document — date, time, statements, demands, and responses.

ALWAYS

escalate to counsel or police when behavior crosses the line.

Sources & Disclaimer

Key authorities cited in this briefing.

N.J.S.A. 40A:9-133	Municipal clerk duties	N.J.S.A. 2C:18-3	Criminal / defiant trespass
N.J.S.A. 40A:9-133.7	Clerk tenure protections	N.J.S.A. 2C:33-2	Disorderly conduct
N.J.S.A. 40A:9-134.1	Duty to defend the clerk	N.J.S.A. 2C:33-8	Disrupting meetings
N.J.S.A. 47:1A-1.1	OPRA — custodian designation	N.J.S.A. 34:6A-25 et seq.	PEOSHA — workplace safety
N.J.S.A. 47:1A-5	Records inspection & copying	N.J. Const. Art. I, ¶ 6	Liberty of speech
N.J.S.A. 40A:9-22.1 et seq.	Local Government Ethics Law	Tarus v. Pine Hill	189 N.J. 497 (2007)
N.J.A.C. 4A:2-2.3	Conduct unbecoming standard	Ramos v. Flowers	429 N.J. Super. 13 (2012)

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