Who is my Lawyer?
Representation from the Public Employee Point of View
South Carolina Local Government Attorneys Institute
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RULE 1.13: ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.
Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if,

(1) despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(h), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that, when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.6, 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1)-(7). Under paragraph (c) the lawyer may reveal such

information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6(b)(3) and 1.6(b)(4) may permit the lawyer to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer

finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.
[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation
[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions
[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Supreme Court of South Carolina.

M. Cindy WILSON, Appellant, v. Joey PRESTON, Anderson County Administrator, Respondent.

No. 26497.

Decided: June 02, 2008

Jay Bender and Holly Palmer Beeson, both of Baker, Ravenel & Bender, L.L.P., of Columbia, for appellant. William A. Coates, D. Randle Moody, II, and Ella Sims Barbery, all of Roe Cassidy Coates & Price, P.A., of Greenville, for respondent. Robert E. Lyon, Jr., and M. Clifton Scott, both of the South Carolina Association of Counties, of Columbia, for Amicus Curiae.

Appellant (Wilson), a member of the Anderson County Council (Council), filed a petition for writ of mandamus. She sought access to records pertaining to the operation of county government, including financial records and legal bills, which were in respondent's (Administrator), possession. Both parties subsequently filed motions for summary judgment. The Administrator's motion was granted. Wilson appealed to the Court of Appeals. We granted Wilson's motion to certify the appeal to this Court.

FACTS

Anderson County operates under a Council-Administrator form of government. In this type of government, the Council is elected by the county's citizens and the Council employs an administrator who serves as the administrative head of the county government and is responsible for the administration of all departments over which the Council has control. S.C.Code Ann. § 4-9-610 and § 4-9-620 (1986).

The powers and duties of the administrator include: executing the policies, directives, and legislative actions of the council; preparing budgets for submission to the council and, in the exercise of that responsibility, having the authority to require such reports, estimates, and statistics on an annual or periodic basis as the administrator deems necessary from all county departments and agencies; preparing annual, monthly, and other reports for council on finances and administrative activities of the county; and performing such other duties as may be required by the council. S.C.Code Ann. § 4-9-630 (1986).

The Administrator was hired by the Council in 1996. Wilson, who was sworn into office in 2001, is one of seven members who comprise the Council. Since being sworn into office, Wilson has sought from the Administrator various financial records pertaining to the operation of county government. At the time of Wilson's 2005 deposition, she had received over 59,000 pages of documents from the Administrator. Wilson stated that she shares the information she receives from the Administrator with the media and the Anderson County Taxpayers Association.

In response to Wilson's requests, the Council adopted an ordinance in 2003 involving the prioritization of the Administrator's duties. Wilson was the lone dissenting vote. The ordinance states:

In performing the duties of his office, the Administrator shall be governed by the following prioritization of functions: those duties established by law or contract, by the Anderson County Code, by the South Carolina Code of Laws, by the Administrator's contract with the County; those duties required for the efficient and effective day-to-day operations and functioning of County government; other duties, as time permits after completion of the first two sets of priorities.

Specifically in regard to this appeal, Wilson sought vendor files where legal expenditures were described, an annual financial report, weekly copies of the general ledger report, and records containing information concerning details of transfers between accounts in excess of $2,500.

After determining the Administrator was failing to give her the documents in a timely and complete manner, Wilson sought a writ of mandamus that would allow her full access to all financial records pertaining to the operation of the county government. The trial court granted the Administrator's motion for summary judgment on the ground that the Administrator's duties in regard to the above documents are discretionary.

ISSUES

I. Did the trial court err by ruling mandamus cannot issue to compel the Administrator to disclose financial records to a county council member?
II. Did the trial court err by ruling mandamus cannot issue to compel the Administrator to disclose to Wilson the narratives in the County's legal bills?

DISCUSSION

A lower court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; Connor Holdings, LLC v. Cousins, 373 S.C. 81, 644 S.E.2d 58 (2007). In determining whether any triable issues of fact exist, the lower court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Id.

The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law. Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651 (2002). To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. Id. Whether to issue a writ of mandamus lies within the sound discretion of the trial court, and an appellate court will not overturn that decision unless the trial court abuses its discretion. Charleston County Sch. Dist. v. Charleston County Election Comm'n, 336 S.C. 174, 519 S.E.2d 567 (1999). Mandamus is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal. Id.

The duties of public officials are generally classified as ministerial and discretionary (or quasi-judicial). Redmond v. Lexington County Sch. Dist. No. Four, 314 S.C. 431, 445 S.E.2d 441 (1994). The character of an official's public duties is determined by the nature of the act performed. Long v. Seabrook, 260 S.C. 562, 197 S.E.2d 659 (1973). The duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. Redmond, supra. It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion. Id. In contrast, a quasi-judicial duty requires the exercise of reason in the adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued. Id.

I. Financial Records

In her complaint, Wilson alleged she has sought and repeatedly been denied copies of the annual financial report (GLR 153), and timely copies of the weekly general ledger reports (GLR 110). Wilson's complaint regarding the GLR 153 was that she wanted to receive an unaudited version immediately at the end of the fiscal year. The Administrator informed her that the annual report was typically only run after the audit was completed and all required adjustments had been made due to the volume and cost associated with running the report. She was told she would be promptly provided with the report after all accounts were closed out and the external audit finalized. A finance department employee stated that an unaudited version of the report is not very relevant because certain items are overstated or understated. Wilson was given the 2004 GLR 153 in December 2004, after the audit was complete.

Regarding the GLR 110s, Wilson's complaint is that she receives them in bunches of four to six and she believes she is entitled to receive them weekly, i.e. immediately after the finance department completes them.

In his deposition, the Administrator stated that he provides Wilson with the GLR 110s as soon as he can. However, he noted that he likes to review them first so that he may anticipate Wilson's future inquiries. He stated that sometimes he did not have time to review them and so there would be a delay in delivery.

Wilson previously moved twice before Council that Council, as a body, instruct the Administrator to provide the ledger reports in a timely manner for their review. The motions died for lack of a second.
Wilson argues the trial court erred by ruling that a writ of mandamus cannot issue to compel the Administrator to disclose financial records to a county council member in a particular manner or time frame. She contends that the Administrator's duty to do so is ministerial and not discretionary.
We find that providing a council member with the county financial information in a particular time frame or manner are discretionary actions on the Administrator's part. The law does not require the Administrator to give the documents to a single council member in any particular manner. See § 4-9-630 (outlining administrator's powers and duties); Long v. Seabrook, supra (duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts). We emphasize the Administrator cannot deny a council member access to county financial documents.[1] However, here, the Administrator has not denied Wilson access to the documents. The Administrator, in his discretion, has delayed the delivery of some documents so that he may be able to respond to queries by Wilson. Further, the Council, acting as a whole with only Wilson dissenting, has enacted an ordinance prioritizing the Administrator's duties so as to ensure that the Administrator takes care of the County's business before fulfilling Wilson's requests. Additionally, the Council has twice declined to accept Wilson's motion to require the Administrator to produce documents in a timelier manner. Given all these circumstances, the Administrator's duty to deliver documents to Wilson is a quasi-judicial duty which requires the exercise of his discretion in determining how the act of delivering the documents shall be done. See Redmond, supra (quasi-judicial duty requires the exercise of discretion in determining how or whether the act shall be done or the course pursued).
Accordingly, the trial court did not err by ruling a writ of mandamus cannot issue to compel the Administrator to deliver the County's financial documents to Wilson in a particular manner or within a particular time frame.[2]

II. Legal Bill Narratives

In 2001, Wilson requested copies of the complete legal vendor files. She was given copies of the legal fees of the county's law firm summarized by fund. In 2003, Wilson was given a listing of general legal expenditures for the year 2002 through March 2003.
Wilson requested again in November 2003 for the complete vendor files. In response to this request, the Administrator sent a memorandum to all members of the Council. In this memo, he stated that Wilson's request for copies of vendor files “where legal expenditure questions are concerned” is attorney-client privileged information with the County being the client. The Administrator informed the Council that only the Council, acting as a corporate body, can authorize the release of those records to anyone, acting as an individual. He stated that if Council authorized and directed the release, then Wilson could have the records; otherwise, the records would not be released.
The next month, Wilson requested the legal expense files from 1997 to 2003. The Administrator responded and attached a summary of all of the County's law firm fees and expenses summarized by fiscal year. The amounts were categorized and she was also given a list of the check numbers and the dates. The Administrator emphasized that only the Council could authorize the release of narrative detail of those records.
In 2004, Wilson made a Freedom of Information Act request for the legal expense vendor files, including a narrative of billable hours supporting each payment. The Administrator gave Wilson the legal expense vendor files, with the narratives redacted. At the October 5, 2004, Council meeting, Wilson moved that Council, as a body, instruct the Administrator to provide the legal expense vendor files. The motion died for lack of a second.
At a subsequent Council meeting, the County's attorney made a presentation. He stated he is the legal adviser to the County and that the County is his client. The attorney stated the narrative descriptions at

issue involved the County's legal strategy and that it is attorney-client privileged information. He stated only the Council acting for the County can release that information and the Administrator cannot waive that privilege.

The Administrator stated that when a request for a document is made, he consults with the County's legal counsel and asks whether it is attorney-client privileged information. His determination is based on legal advice he receives from the County's attorney.

In her deposition, Wilson agreed that the description of the legal work in the bills may reveal litigation strategy. Wilson admitted that if she was given the legal narratives and she saw something that was "silly," she would release the information to the public.

Initially, Wilson argues the lower court erred by not reviewing the legal bill narratives in camera when making its decision. However, Wilson did not request that they be reviewed in camera below and she did not raise this argument until on appeal. In any event, the trial court was not required to actually review the legal bill narratives to determine if the privilege existed. We have held that the trial court must determine the question of privilege without first requiring disclosure of the substance of the communication. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981).[3] See also Tucker v. Honda of South Carolina Mfg., Inc., 354 S.C. 574, 582 S.E.2d 405 (2003) (trial court should not require disclosure of attorney client communications to other parties without first determining whether the communications are privileged by inquiring into all the facts and circumstances of the communication; if necessary to determine the application of the privilege, the trial judge may consider, in camera, the material); State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980) [4] (whether a communication is privileged is for the trial judge to decide in the light of a preliminary inquiry into all of the facts and circumstances; and this determination is conclusive in the absence of an abuse of discretion). In the instant case, in light of the fact that Wilson never requested such an in camera review, the trial court did not abuse his discretion by determining the existence of the privilege without reviewing the narratives in the legal bills.

The attorney-client privilege is based upon a public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures made by the client within the relationship is maintained. State v. Doster, supra. The attorney-client privilege belongs to the client and not the attorney, and may be waived only by the client. Tucker v. Honda of South Carolina Mfg., Inc., supra. In general, the burden of establishing the privilege rests upon the party asserting it. State v. Love, supra.

Wilson argues the Administrator should not be making judgments about what is subject to the attorney-client privilege. However, when a request for a document is made, the Administrator consults with the County's attorney and asks whether it is attorney-client privileged information. The determination of what is privileged information is based on legal advice the Administrator receives from the County's attorney. Therefore, we find the Administrator is not making the determination but is relating the information he receives from the County's attorney to the Council when a request is made for possibly privileged documents.

Wilson, as a council member, cannot independently review attorney-client privileged documents. The privilege belongs to the client County; and the Council, as a whole, is authorized to release that information and has to waive the privilege before an individual council member can review privileged documents. See S.C.Code Ann. § 30-4-40(a)(7) (2007) (a public body may but is not required to exempt from disclosure the following information: correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships). The trial court did not abuse its discretion by finding a writ of mandamus cannot issue against the Administrator to compel him to release information where the Council has not authorized such a release. See Redmond, supra (quasi-judicial duty requires discretion in determining how or whether the act shall be done or the course pursued); Charleston County

Sch. Dist., supra (appellate court will not overturn decision not to issue a writ of mandamus unless the trial court abuses its discretion).

CONCLUSION

We find the trial court did not err by ruling a writ of mandamus cannot issue to compel the Administrator to deliver the county's financial documents to Wilson in a particular manner or within a particular time frame. We further find the trial court did not err by ruling a writ of mandamus cannot issue to compel the Administrator to release attorney-client privileged information without authorization by the client County. Accordingly, the decision of the trial court is

AFFIRMED.

Although I concur in the majority's decision to deny Appellant Wilson's petition for a writ of mandamus, I write separately because I believe that this dispute is not a proper matter for this Court's consideration. In seeking the disclosure of the financial records in such a particular form and manner, Appellant essentially asks the Court to delve into internal disputes among Anderson County Council members and to overturn the Council's decisions.[5] In my view, issues related to the propriety of Respondent's actions in this case present purely political questions, the resolution of which rests solely within the Council's domain. In my opinion, any ruling from this Court would impermissibly operate as judicial review of the Council's policy decisions, and I would decline Appellant's request to intrude in this area. See S.C. Pub. Interest Found. v. Judicial Merit Selection Commn., 369 S.C. 139, 142-43, 632 S.E.2d 277, 279 (2006) (observing that adjudication of nonjusticiable political questions would place a court in conflict with a coequal branch of government, and thus, a court will not rule upon questions which are political in nature rather than judicial). For these reasons, I would hold that this is a nonjusticiable political question and would therefore deny Appellant's request for a writ of mandamus.

I concur in part and dissent in part. I concur in the opinion of the majority that mandamus cannot issue to compel the Administrator to disclose attorney-client privileged information. However, my concurrence is limited to the facts of this case where Wilson admits that she would disclose the privileged information to the public at large. The privilege belongs to the Council, not Wilson.

In my view, an elected official by virtue of the office held has the inherent right of timely access to any and all information possessed by the governmental entity that he or she is duly elected to. To hold otherwise would condone the disenfranchisement of the people the elected official represents. The denial of information would clearly hinder, if not nullify, an elected official in the performance of his duties. Accordingly, I respectfully dissent in the majority's decision that mandamus cannot issue to compel the Administrator to disclose financial information to a member of county council.

Moreover, the Freedom of Information Act requires a governmental entity or other public body to disclose the type of financial information requested by Wilson. See S.C.Code Ann. § 30-4-30(a) (2007) (providing that any person has the right to copy or inspect a public record); S.C.Code Ann. § 30-4-50(A)(6) (2007) (defining as “public information” any “information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies”). This statutory requirement removes any discretion on the part of the public body. In this instance, the lack of discretion whether to disclose the requested information makes the disclosure ministerial in nature and subject to mandamus, but for the injunctive remedy provided by section 30-4-100. Further, the county ordinance prioritizing the duties of the Administrator is unavailing in its attempt to delay responding to a request for financial information of the sort at issue here. Section 30-4-30 allows only 15 days for a response to a request for information. If the request is granted (in this case it must be) the information must be available for review.

FOOTNOTES

1. See S.C. Atty. Gen. Op. dated June 7, 2001 (2001 WL 790260); S.C. Atty. Gen. Op. dated September 23, 1997 (1997 WL 665446); S.C. Atty. Gen. Op. dated March 24, 1995 (1995 WL 803345);

S.C. Atty. Gen. Op. dated August 18, 1983 (1983 WL 181974); S.C. Atty. Gen. Op. dated December 2, 1977 (1977 WL 24717).

2. The dissent disagrees with "the majority's decision that mandamus cannot issue to compel the Administrator to disclose financial information to a member of county council." However, this is not our holding. We reiterate the Administrator cannot deny a council member access to county financial documents. If such a denial occurs, issuing a writ of mandamus is clearly appropriate. However, in this case, the Administrator did not deny Wilson's requests for financial documents. Wilson's argument is that the Administrator should be compelled to disclose the financial documents in a particular time frame and manner. We find that a writ of mandamus cannot issue to compel the Administrator to deliver the County's financial documents to Wilson in a particular manner or within a particular time frame.

3. Cert. denied, 454 U.S. 1030, 102 S.Ct. 566, 70 L.Ed.2d 473 (1981).

4. Cert. denied, 449 U.S. 901, 101 S.Ct. 272, 66 L.Ed.2d 131 (1980).

5. For example, the Council declined Appellant's motion to compel Respondent to disclose the documents and the Council passed a specific ordinance prioritizing Respondent's job responsibilities.

Justice MOORE.

WALLER, J., concurs. TOAL, C.J., concurring in a separate opinion in which PLEICONES, J., concurs. BEATTY, J., concurring in part and dissenting in part in a separate opinion.

RULE 1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4: COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(g), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.6: CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(4) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(5) to secure legal advice about the lawyer's compliance with these Rules;

(6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(7) to comply with other law or a court order; or

(8) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing

RULE 1.9: DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.