

LOCAL GOVERNMENT LAWYER Who is my Client?

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Rule 1.13, Organization as Client

In order to understand your confidentiality obligations and possible conflicts of interests, you must first identify your client.

According to Comment 9, to Rule 1.13, “[d]efining 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.”

Who is my client?

Traditional Role of City or County Attorney

- Chief legal advisor and attorney for the city (or county), its boards, commissions, bureaus, officers
- Prosecute or defend all suits or cases to which the city (or county) are a party
- Perform other such legal duties as the city or county council may by resolution or ordinance require.

Who is my client?

Inherent challenges due to the nature of the work of a local government lawyer:

- Performing non-traditional legal work such as
 - Holding office
 - Making policy
 - Giving political advice
- Providing advice in non-adversarial roles



Who is my client?

According to Rule 1.13(a), an attorney represents the organization "acting through its duly authorized constituents."

Who is my Client?

- The public?
- The local government as a whole?
- The agency or department in which you are assigned responsibility?
- The responsible officers who make decisions for the agency or department?
- City or county council?
- Mayor? city manager?

Who is my client?

Ultimately, a local government attorney's ethical obligations are to the local government's governing board because that is the "highest authority that can act on behalf of the organization."

See Comment 5 to Rule 1.13.



Attorney Client Privilege and Work Product

South Carolina Freedom of Information Act exempts from disclosure, “[c]orrespondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.” S.C. Code Ann. § 30-4-40 (7).

Who is my client?

Because the local government lawyer will likely develop close personal and professional relationships with individuals within the city / county it is important to have a clear understanding of the identity of the client.

If the local government lawyer leads an individual employee to believe that the lawyer represents the individual, it will imperil the local government’s control over confidential attorney client information.

Who is my client?

Important for individual employees or council members to understand

- Attorney-client relationship is with the local government entity and any information shared is that of the entity's, not that of the individual
- Attorney-client relationship which exists between the individual and the lawyer is by virtue of the relationships with the local government
- Individual should consult with own attorney regarding any potential personal liability

Rule 1.6, Confidentiality of Information

Client confidentiality is not just client "secrets" of which third parties have no knowledge. Confidential information is ANY INFORMATION about the client or the client's legal matter - regardless of whether it is secret and regardless of its source.

Confidentiality vs. The Lawyer/Client Privilege

Rule 1.6's ethical duty of confidentiality applies to all information relating to the representation, whatever its source. It is broader than the evidentiary lawyer/client privilege. While the evidentiary privilege can be waived when the client reveals his secrets to a third party or when the secret becomes public knowledge, client confidentiality applies regardless of general or specific knowledge of the information by those outside the relationship.



Rule 1.13(b), Organization as Client

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 . . . 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.

Rule 1.6, Confidentiality of Information

While Rule 1.6, applies to the local government lawyer, "[w]hen the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved." Rule 1.13, Comment 9.

Question: When should a local government attorney advise an individual he or she should seek personal counsel?

Answer: When the individual's interests conflict with that of the agency or when the lawyer's representation will be materially limited by the lawyer's responsibilities to another client.



Conflicts of Interest Rules 1.7, 1.9, 1.11

Simultaneous representation of clients with adverse interests

- Simultaneous representation as to the same matter is prohibited *per se*

Successive representation of clients with adverse interests

- Successive representation is prohibited if there is a substantial relationship between the current matter and the prior representation.

Who is my client?

Rule 1.7 (b), Conflict of Interests: Current Client

Notwithstanding the existence of a concurrent conflict of interest, 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.

Who is my client?

What issues of conflict arise in representing various officials of the City or County?

- City/county attorney always advises city / county officials in their official capacity not as individuals with interests separate and distinct from the city/county. Because the city/county attorney represents the city/county as a single client entity, the adverse interests of two or more city officials generally does not give rise to a conflict

Who is my client?

Conflicts of Interest arise most often

- (1) disputes between the city/county and its quasi-independent boards or commissions or joint powers authorities of which the city is a member;
- (2) the defense of employees pursuant to the S.C. Tort Claims Act.

Ethical "Must Do's"

Under South Carolina's rules, local government counsel should observe rules of:

- Courtesy and Consideration (Rule 402(h), SCACR)
- Fidelity and Integrity (RPC)
- Confidentiality (Rules 1.6, 1.13, RPC)
- Privacy (state and federal law)



"Honestly Madam, do you expect this court to believe that *all* of your husbands mysteriously disappeared at this same time in November?"
