



Quality Legal Representation

(from the Client's Perspective)

Supplemental Information

A Panel Discussion

Alan Bojorquez, Moderator
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ABA Model Rules of Professional Conduct

■ Rule 1.1. Duty of Competence

- The Gist: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
- Comment: The most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.
- Questions:
 - Can any lawyer function as a City Attorney?
 - Are Special Training and Experience required to serve as a City Attorney?
 - Does one typically become a Municipal Lawyer through their practice (experience), professional development, and continuing education activities?
 - What are the advantages of engaging a Municipal Lawyer?

■ Rule 1.2. Scope of Representation

- The Gist: A lawyer shall abide by a client's decisions concerning the objectives of representation. A lawyer shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is expressly or impliedly authorized to carry out the representation.
- Comment: The client has the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations.

■ Questions:

- Who sets the legal priorities and objectives in a particular municipality?
- Who establishes the parameters within which a City Attorney must operate?
- Might a Home-Rule Charter influence a City Attorney's duties?
- To what extent does the City Attorney make policy decisions?
- When does the City Attorney have discretion to act without client instruction?

■ **Rule 1.4: Communications**

- The Gist: A lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

- Comment: A lawyer should promptly respond to or acknowledge client communications. The lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

■ Questions:

- Must a City Attorney tell the City Council everything?
- When is a City Attorney justified in only informing certain city officials?
- How quickly must a City Attorney notify client representatives?
- Must everything be a meeting or a memo, or can a City Attorney utilize email, text messages, or phone calls interchangeably?

■ **Rule 1.6. Confidentiality**

- The Gist: 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 the rules. A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, data relating to the representation of a client.

- Comment: This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this data to represent the client effectively and advise the client to refrain from wrongful conduct.

■ Questions:

- Is the duty to protect Confidential Info only applicable to external disclosures?
- With which city officials can a City Attorney make disclosures?
- Must a City Attorney maintain confidentiality among / between city officials (i.e., safeguarding data given by one city official to keep away from other city officials)?

■ Rule 1.7. Rule 1.13 Organization as a Client

- The Gist: A lawyer can't represent a client if it involves a Conflict -- representing one client will be directly adverse to another client, or there is a significant risk that the representation of one will be materially limited by the lawyer's duties to another, a former client or a third person, or by a personal interest. The lawyer can proceed in the representation if the lawyer reasonably believes they can provide competent and diligent representation to each affected client, the representation is not prohibited by law, does not involve the assertion of a claim by one client against another client in the same proceeding, and each affected client gives informed written consent.
- Comment: Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Even where there is no direct adverseness, a Conflict exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests.
- Questions:
 - Who does the City Attorney take direction from when the Mayor and City Manager are opposed by a majority of the City Council?
 - Does the City Attorney have a Conflict preventing them from negotiating and drafting the City Manager's employment agreement?
 - Is the City Attorney able to investigate or prosecute a member of the City Council?

■ Rule 1.13 Organization as a Client

- The Gist: A lawyer employed or retained by an organization represents the org acting through its duly authorized constituents. In dealing with an org's directors, officers, employees, etc., a lawyer shall explain the identity of the client when the lawyer knows that the org's interests are adverse to those of the constituents with whom the lawyer is dealing. A lawyer representing an org may also represent any of its directors, officers, employees, etc., subject to any conflicts.
- Comment: An organizational client is a legal entity, but it acts through its officers, directors, employees, etc. When constituents 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. The duty defined in this Rule applies to governments. 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.
- Questions:
 - Who speaks for a City when it comes to directing the City Attorney?
 - Are a City's "constituents" only the City Council, or also managers, department heads, and volunteer citizen advisory boards?
 - Can the City Attorney speak out publicly when they disagree with a lawful policy decision?