

# Walking the Ethical Tightrope: The Challenges of a City Attorney



June 2012

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**BOJORQUEZ**  
**LAW FIRM, PLLC**  
TexasMunicipalLawyers.com

# Introduction

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## What is Ethics?



# Introduction

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- A. Billing Practices
- B. Confidential Information
- C. Conflicts of Interest Generally
- D. Conflicts of Interest Related to Former Clients
- E. Successive Government and Private Employment
- F. Organization as the Client
- G. Attorney to Attorney Communications
- H. Role of the Office of Chief Disciplinary Council

# Billing Practices: Rule 1.04

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- **Communication of Fees**
- **Types of Fees**
- **Invoicing Client**

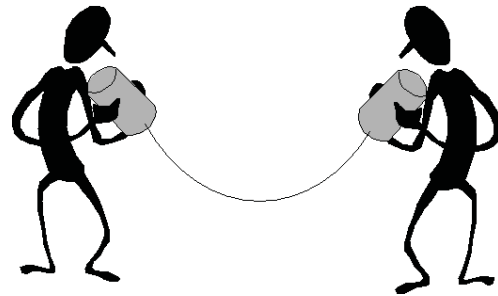


# Billing Practices: Rule 1.04

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## Communication of Fees

- Communicate Basis or Rate of Fees



- New v.  
Existing Client



# Billing Practices: Rule 1.04

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## Types of Fees

### ■ Unconscionable Fee:

■ A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.

### ■ Reasonableness Factors



# Billing Practices: Rule 1.04

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## FEES:

The **Town**, for and in consideration of legal services rendered and to be rendered by the **Attorney** does hereby agree to pay unto **Attorney** as follows: One Hundred Sixty Five and No/100 U.S. Dollars (\$165.00) per hour for **Attorney's** services. The **Attorney** shall provide a detailed billing statement to the **Town** at the end of the month.

Additionally, the **Town** shall pay a gasoline reimbursement in the amount of Two Hundred Fifty and No/100 U.S. Dollars (\$250.00) per month to the **Attorney** as reimbursement for travel expenses to and from the **Town**. The **Attorney** will be considered a regular part-time employee for the purposes of employee benefits and shall receive all benefits allowed for a full time employee.

# Billing Practices: Rule 1.04

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## Invoicing Clients

- Communicate frequency of invoicing to client.
- Invoice on a regular, consistent basis.
- Avoid balloon invoices.
- Ensure that each invoice is submitted in time so that if the City Council must approve payment, the invoice is received before the meeting.



# Billing Practices: Rule 1.04

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February 28, 2011

FINAL STATEMENT

Legal Services Rendered from May, 2010 through 2/28/11-

Total.....\$23,405.00

AMOUNT DUE.....\$ 23,405.00

# Confidential Information: Rule 1.05

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- **Privileged v. Unprivileged Information**
- **To Whom the Lawyer May Reveal Confidential Information**
- **Time Period for Prohibition from Revealing Confidential Information**
- **Confidential Information & the Organization as a Client (Rule 1.12)**



# Confidential Information: Rule 1.05

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## Privileged v. Unprivileged Information

**Privileged:** “made for the purposes of facilitating the rendition of professional legal services”

**Unprivileged:** “all information relating to a client or furnished by a client, other than privileged information, acquired by the lawyer during the course or by reason of the representation of the client.”

# Confidential Information: Rule 1.05

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## To Whom the Lawyer May Reveal Confidential Information:

**NO ONE**, except:

- When the client consents (majority vote by City Council);
- To prevent a crime; or
- When necessary to effectively represent the client.

# Confidential Information: Rule 1.05

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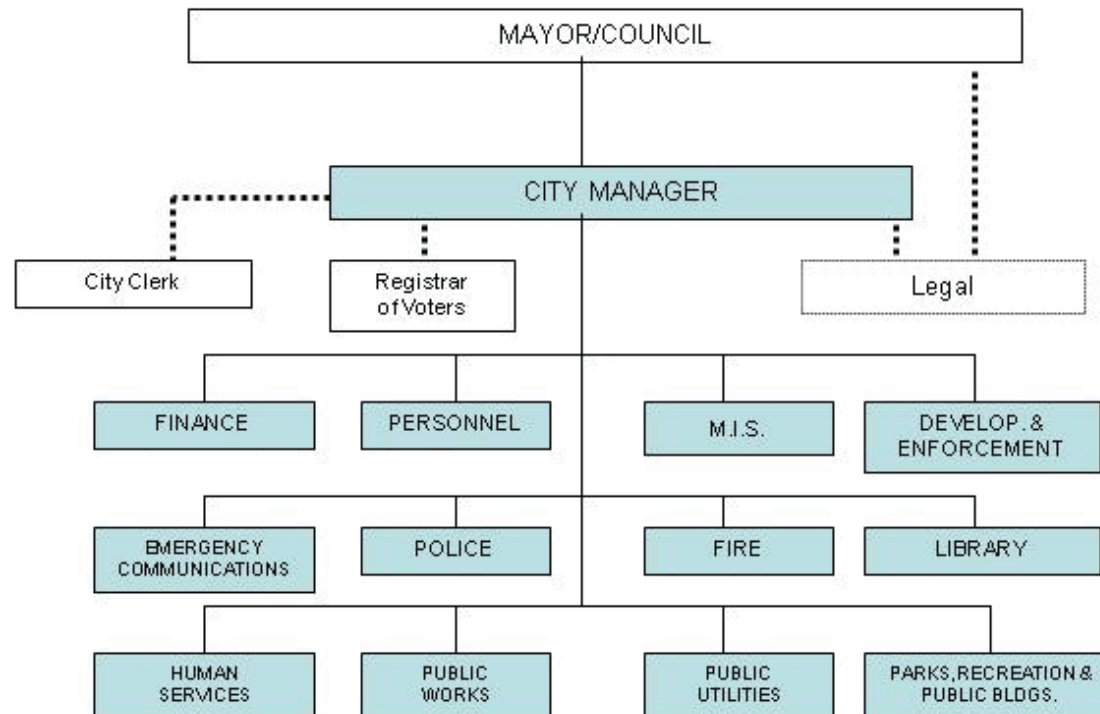
## Time Period for Prohibition from Revealing Confidential Information:

**NEVER**; except

1. under the exceptions just discussed; or
2. once the information is public knowledge.

# Organization as Client: Rule 1.12

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# Conflict of Interest Generally: Rule 1.06

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- **Opposing Parties in Litigation**
- **General Rule Outside of Litigation**
- **Exceptions to the Rule**



# Conflict of Interest Generally: Rule 1.06

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## Opposing Parties in Litigation

“Opposing Parties”: judgment favorable to one of the parties will directly impact unfavorably upon the other party.





# Conflict of Interest Generally: Rule 1.06

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## General Rule Outside of Litigation

- Substantially Related Matter
- Directly Adverse



# Conflict of Interest Generally: Rule 1.06

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## Permissible Representation (Exceptions to the Rule):

- Lawyer's Reasonable Belief that the representation of each client will not be materially affected; **AND**
- Each affected or potentially affected client consents.

# **Representation of Current Client Adverse to Former Client: Rule 1.09**

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- **Without Consent**
- **Personal Former Representation**
- **Adverse Matter**
- **Three Prohibited Circumstances**

# Representation of Current Client Adverse to Former Client: Rule 1.09

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## Prohibited Circumstance #1

The current client questions the validity of the work product for the first client.



# Representation of Current Client Adverse to Former Client: Rule 1.09

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## Prohibited Circumstance #2

A reasonable probability exists that the representation of the second client would cause the lawyer to violate the obligations owed the former client under Rule 1.05.

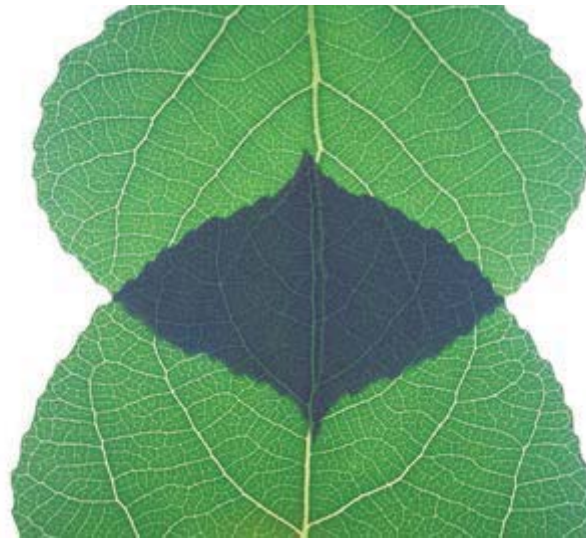


# Representation of Current Client Adverse to Former Client: Rule 1.09

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## Prohibited Circumstance #3

When representation of the second client involves the same or substantially related matter as the first client.



# **Successive Government and Private Employment: Rule 1.10**

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- **Two Prohibitions**
- **Other Members of the Firm**
- **Representation of Private Client by Current Government Employee**
- **Exemptions to Rule 1.10**

# Successive Government and Private Employment: Rule 1.10

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## Two Prohibitions:

1. Personal and Substantial Participation (related to specific matter).
2. Confidential Government Information (related to the client on any matter).



# Successive Government and Private Employment: Rule 1.10

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## Other Members of the Firm

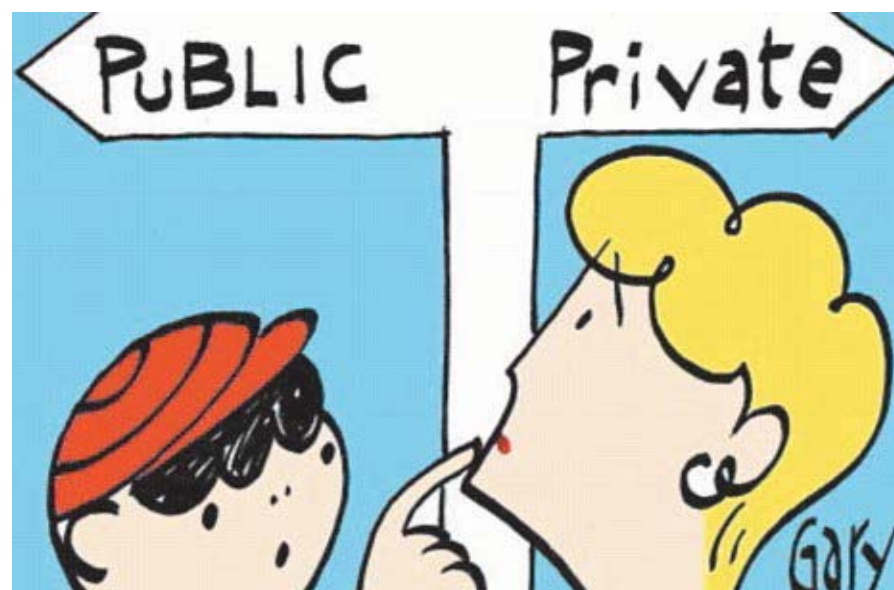
1. Screened from participation and not apportioned any part of the fee; and
2. Written notice is given to the government agency.



# Successive Government and Private Employment: Rule 1.10

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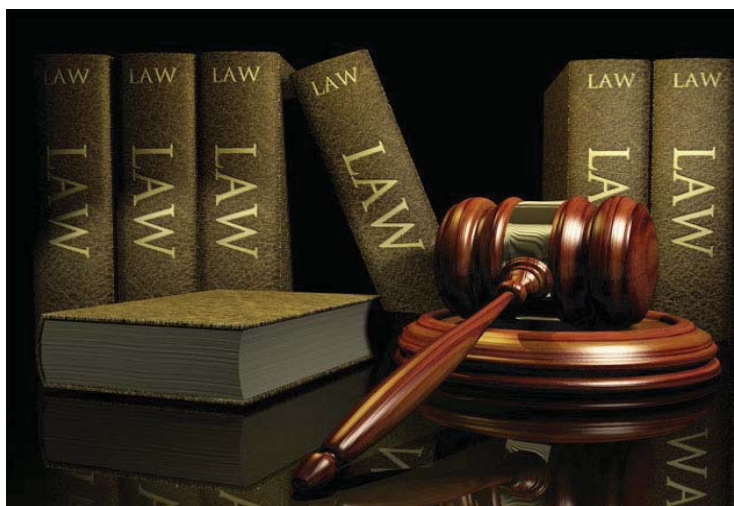
## Representation of Private Client by Current Government Employee



# Successive Government and Private Employment: Rule 1.10

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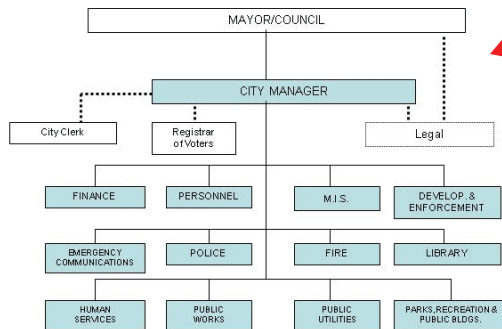
## Exemptions to Rule 1.10: Regulation Making & Rule Making



# Communication with One Represented by Counsel: Rule 4.02



**Municipal Attorney**



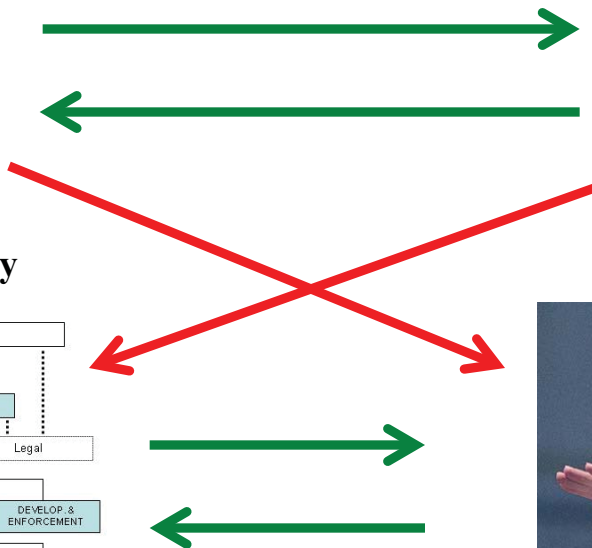
**Municipality**



**Developer Attorney**



**Developer**



# Role of the Office of the Chief Disciplinary Council

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## Receives and Reviews Grievances

- Grievance Process
- Consequences of a Grievance



# Role of the Office of the Chief Disciplinary Council

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## Grievance Process

- Classification Stage
  - Inquiry
  - Complaint
- Just Cause Investigation
  - Summary Disposition Panel (just cause not found)
  - Evidentiary Panel or District Court (just cause found)

# Role of the Office of the Chief Disciplinary Council

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## Consequences of a Grievance

- Reprimand
  - Public; or
  - private
- Suspension from the Practice of Law
- Disbarment



# Conclusion

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- Municipal Attorneys are faced with unique ethical challenges.
- The “right choice” isn’t always the most obvious choice.
- A good understanding of the rules will prevent complaints against **you**, help identify ethical conflicts of **other city attorneys**, and foster the relationship with your **client(s)**.



# Conclusion

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