

THE MAYOR V. THE EDC

UNDERWOOD

Presented by:

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Fictional Case Scenario

- City of Clairemont, Texas
 - Home-Rule
 - Population < 7500
 - Clairemont EDC
 - No member of city council or city staff on EDC Board
 - Mayor and City Council conflict
 - Mayor and City Manager conflict

Phone Call #1

- City Manager Call
 - Wants city attorney to attend EDC executive session and City Council executive session
 - New economic development project – big truck stop
 - Mayor against project
 - Streets/environment
 - Owns gas stations in town
- Issues to consider:
 - Who is my client?
 - Can I represent the EDC and the City?
 - Can I attend the EDC executive session?
 - What about the Mayor's comments?

Who is my client?

- Texas Disciplinary Rules of Professional Conduct Rule 1.12 – Organization as a Client
 - Represent the entity
 - Can take direction from authorized constituents
 - In dealing with an organization's directors, officers, employees, etc., a lawyer shall
 - explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing or
 - when explanation appears reasonably necessary to avoid misunderstanding on their part.
 - Lawyers representing governmental entities – role may be defined by statutes and regulations; sometimes more difficult to define precisely the identity of the client.

What about representing the EDC?

- Statutory basis/limits for City-EDC relationship
- The EDC:
 - works on behalf of the city. TLGC § 501.051
 - is a nonprofit corporation subject to “the control of the governing body of the corporation's authorizing unit.” TLGC § 501.054
 - board of directors are appointed by the city council and they “may remove a director for cause or at will.” TLGC § 501.062; § 505.051 505.051
 - city council approves bylaws, certificate of formation, all “programs and expenditures”, etc. TLGC § § 501.064, 501.073, 501.301, 501.302
 - required training for municipal attorney on operation of the EDC. TLGC § 502.101(a)(1)

What about representing the EDC?

- Texas Disciplinary Rules of Professional Conduct Rule 1.06 – Conflict of Interest: General Rule
- A lawyer shall not represent a person if the representation of that person:
 - (1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or
 - (2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.
- A lawyer may represent a client in the circumstances described above if:
 - (1) the lawyer reasonably believes the representation of each client will not be materially affected; and
 - (2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

Phone Call #2

- Call to EDC Chair
 - EDC retained their own legal counsel – apparent expertise
 - Mayor has attended meetings and has attended executive session
 - Mayor voiced opposition to project
 - Mayor claims he “owns” the EDC and will stop the project
 - EDC hears about Mayor’s apparent conflict
 - Directs outside legal counsel to get TRO
 - Mayor’s response

What are my responsibilities as the city's attorney?

- Practical Steps
- Texas Disciplinary Rules of Professional Conduct
 - Rule 1.12 (e) – comments must explain when explanation appears reasonably necessary to avoid misunderstanding on the part of the client.
 - Rule 1.02(a) - “a lawyer shall abide by a client's decisions: (1) concerning the objectives and general methods of representation;”
 - Rule 1.02 (f) - “[w]hen a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.”
 - Rule 1.06 - personal interests of the Mayor “materially and directly adverse” to the interests of the EDC and the city.

Phone Call #2

- Call from the Mayor
 - Served with TRO
 - Attends EDC executive session anyway
 - Arrested and injured in the arrest
 - Wants representation
- Issues?
- Mayor's interest is adverse to the city
 - Impossible for you to represent the mayor on his criminal case without taking a position adverse to the City of Claremont or the EDC.
 - You are not a criminal defense attorney
 - Based on Rules 1.01, 1.06, and 1.12 you inform the mayor that you cannot represent him.

Conclusion

- Don't be like the Mayor and;
- Don't forget the Rules!

THANK YOU

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