TEXAS CITY ATTORNEYS ASSOCIATION
JUNE 10, 2010

Ethical And Strategic Challenges:

The City Attorney As Investigator

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I. Introduction: City Attorney Acting as an Investigator (Legal Advisor or Fact Finder—Not Both)

This paper addresses the decisions a City Attorney must make to determine whether he or she should perform an internal investigation, or whether an outside attorney or fact finder should serve as an investigator. The paper advocates that the decision be made before the inception of the investigation with a clearly defined role for the City Attorney or independent fact finder and the paper addresses potential outcomes based on that decision. The paper illustrates there are strategic as well as ethical consequences the City must consider simultaneously and weigh in the decision-making process. The ethical considerations involving the City Attorney's role are covered in detail.

II. *End Result: Fact Finding and Potential Outcomes*

To determine upfront who should perform an internal investigation and the role of the investigator, you must decide what is the goal of the investigation, and how the investigation might be used in the future. Additionally, the City must consider whether there is a policy in place governing who will perform the investigation. If there is a policy in place, it should provide options as to who may conduct the investigation leaving the City the option of using an effective person for the circumstances.

If litigation is anticipated as a result of the potential outcome of the investigation, will the investigation need to be introduced as evidence of the City's actions to address a potential problem? If so, the investigation may be the centerpoint of the City's defense in future litigation. A harassment investigation in the employment context exemplifies this outcome.

In a hostile work environment case under Title VII or the Texas Labor Code, an affirmative defense may be established by an employer if the employer shows it acted promptly. *Lauderdale v. Texas Dep't of Crim. Justice, Instit. Div.*, 512 F.3d 157, 164, (5th Cir. 2007) ("In *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 764-65, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998), and *Faragher*, 524 U.S. at 807, 118 S.Ct. 2275, the Court recognized one affirmative defense that employers may raise against a [T]itle VII claim alleging a hostile work environment created by a supervisor's sexual harassment. So long as the supervisor's actions did not result in a 'tangible employment action' against the employee, *Faragher*, 524 U.S. at 807, 118 S.Ct. 2275, employers may assert the *Ellerth*/*Faragher* defense, which requires the employer to prove by a preponderance of the evidence '(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.' *Id.*")

If the City believes the internal investigation may be used as part of an affirmative defense, the City should not expect to be able to claim the investigation as privileged, otherwise the investigation cannot effectively establish its affirmative defense. *See, e.g., Zambrano v. Northside ISD*, No. Civ. A SA-98CA0976OG, 1999 WL 33290611, *13 (W.D. Tex. Sept. 29, 1999) (Court's analysis follows findings made during investigation reflected in report and

employers actions taken in response to those findings to determine that the affirmative defense applies.)

Further, even though an attorney may have conducted the investigation, the investigation cannot be used as both "sword and shield." *See, e.g., Reitz v. City of Mt. Juliet*, 680 F.Supp.2d 888, 892-93 (M.D. Tenn. 2010) ("Now, the City seeks to block discovery of the interview memoranda that document [the attorney's] investigative efforts. But the defendant cannot use the [the attorney's] report as a sword by premising its *Faragher-Ellerth* defense on the report, then later shield discovery of documents underlying the report by asserting privilege or work-product protection. *Walker v. County of Contra Costa*, 227 F.R.D. 529, 535 (N.D. Cal. 2005); *McGrath v. Nassau County Health Care Corp.*, 204 F.R.D. 240, 246 (E.D.N.Y. 2001). The Sixth Circuit has recognized that, when a party uses 'the content of privileged communications' offensively, it is troublesome for the party to subsequently claim privilege 'as a shield to prevent either testing of the claim or, if some privileged communications have been revealed, amplification or impeachment of the material.' *Ross*, 423 F.3d at 605 n. 5. Accordingly, 'the privilege may be implicitly waived when the defendant asserts a claim that in fairness requires examination of protected communications.' *Id.* at 605 (citation omitted); *see also In re Grand Jury Proceedings Oct. 12, 1995*, 78 F.3d 251, 256 (6th Cir.1996) (directing that the scope of a privilege waiver 'must be guided by fairness concerns')."); *see Newsome v. State*, 922 S.W.2d 274, 279 (Tex. App.—Austin 1996) (Court of Appeals upholds discovery sanctions where District Court struck pleadings due to offensive use of privilege where party initially withheld information based on self-incrimination privilege, then used that information in affidavits as evidence in summary judgment proceeding.)

In addition to these considerations, the City may be faced with an open records request for the investigative report or underlying documentation and must address the privacy and or legal issues in conjunction with the City's basis for the investigation and potential use in the long run. In *Harlandale Independent School District v. Cornyn*, 25 S.W.3d 328, 334-35 (Tex. App.—Austin 2000, pet denied) the Court determined that the primary purpose of the lawyer's retention was to provide legal services and advice, not fact finding; consequently, the Court did not require disclosure of any of the lawyer's investigative report under the Public Information Act. Clearly the essence of the Court's inquiry revolved around the purpose for which the attorney was hired and the evidence supported that the purpose was for legal advice.

III. ***Making the City Attorney's Role Clear in the Investigation***

Not only to address ethical obligations, but to ensure that the role of the City Attorney is understood by all, the City Attorney must articulate his or her role in the investigation up front. This is important for the Council to know, the City Manager and any interviewees with whom the City Attorney comes in to contact.

If the City has made the choice to use the City Attorney as a legal advisor on potential litigation or assessment of risk involving the facts related to the investigation, then the discussions need to be prefaced with an opening by the City Attorney that he or she is acting as the lawyer for the City, not any single person, and that the discussions are subject to the attorney/client communication.

If the City has made the choice to use the City Attorney as a fact finder, the City Attorney must disclose that he or she ***is not acting in the role of an attorney*** and the discussions are not protected by the attorney/client privilege and his or her notes and potential report are not considered work product. ***This is in anticipation of the City Attorney's work being discoverable in litigation.*** It is imperative for the City Attorney to make this distinction up front so that there is no confusion with the role the City Attorney undertakes.

IV. *City Attorney as Fact Finder May Require Separate Counsel To Determine Potential Liability*

Once the City Attorney has performed the investigation, the City Attorney may report the findings he or she has made, but should refrain from attending any meetings or engaging in any correspondence with anyone who may claim a privilege to the discussions or correspondence later on. In other words, it is best to use a separate attorney to provide legal advice on the liability aspect of the circumstances after the fact finding has been made. This ensures the discussions with the Council and Manager regarding potential risk as a result of the fact finding remains privileged. Otherwise, if the City Attorney (after acting as a fact finder) sits in a discussion where liability is discussed, then an argument may be made that those discussions are not protected by the attorney/client communication privilege. At a minimum, it poses a credibility problem in front of a jury and judge for the City Attorney to disclose certain aspects of his or her involvement but then attempt to cloak certain aspects with a privilege.

Another scenario cities frequently encounter involves situations where another department (e.g. Human Resources) conducts an investigation, which provides the opportunity for the City Attorney to perform the legal advisor role to the client. However, care should be taken to avoid the legal advisor giving advice on how the investigation should be done or its scope.

The other frequently encountered dynamic in larger City Attorney offices that may have divisions within the legal department, is whether an Assistant City Attorney in one division can perform the investigation, and another division or the City Attorney handle the legal advisor role. Again, a Chinese Wall can be used to separate the roles but if litigation ensues, will a judge and jury see the distinction as meaningful?

V. *The Challenges of Representing an Entity*

When an individual walks into an attorney's office and hires a lawyer, the relationship is relatively straightforward: the attorney knows who the client is, keeps that person's communication confidential, respects the client's decisions regarding the direction of any litigation, and, of course, works to protect that person's interests.

When representing an entity, however, things are not quite as simple. If, for example, an attorney represents a city, that lawyer will interact with, and take direction from, any number of elected officials or municipal staff. Which of those people is the client? Which communications are confidential? From whom should the attorney take his direction? What if he receives conflicting direction from two equally legitimate sources within the city hierarchy? And what should the attorney do when the interests of an individual conflict with the interest of the entire city?

Rule 1.12 anticipates these types of problems, and attempts to provide guidance to attorneys facing them. The rule is essentially comprised of three parts. The first section deals with identifying the true client; the second identifies problem areas likely to arise; and the third section sets forth remedial measures an attorney should take to address these problems.

VI. ***Breaking Down the Rule***

The first paragraph of Rule 1.12 reads as follows:

> *(a) A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b) the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.*

First, the rule makes it clear that the lawyer represents the entity, and not the individual "constituents". Secondly, the rule recognizes the reality that an attorney providing legal representation will interact with individuals within the entity. Additionally, the rule sets forth a duty, in certain circumstances, to protect the interests of the organization itself.

This section, and the comments that correspond to it, address the most fundamental issue involved with representing an entity: what it means to represent the entity. A lawyer represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents.[1] However, the rule recognizes the inherent difficulty associated with this situation: namely, that an organization can only speak, act and decide through its members.[2] The result is an attorney-client relationship in which the client is always represented by intermediaries. Accordingly, a lawyer is required "to be concerned whether the intermediary legitimately represents the organizational client."[3]

An attorney representing an entity should also be mindful to clarify his role when dealing with constituents of the organization. There may be situations in which the organization's interests become, or are likely to become, adverse to some of its members. In those circumstances, the lawyer has a responsibility to advise the constituent of the conflict or potential conflict, that the lawyer cannot represent the individual, and that such person may wish to obtain independent representation.[4]

The second paragraph of Rule 1.12 reads as follows:

> *(b) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that:*
>
> (1) *an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which*

[1] Tex.Disc.R.Prof.Conduct 1.12, Comment 1.
[2] Id.
[3] Id.
[4] *See* Tex.Disc.R.Prof.Conduct 1.12(e), and Comment 4.

> *reasonably might be imputed to the organization;*
>
> (2) *the violation is likely to result in substantial injury to the organization; and*
>
> (3) *the violation is related to a matter within the scope of the lawyer's representation of the organization.*

In this section, the rule contemplates the conflicts that arise between an organization and its members, and identifies the situation in which a lawyer *must* take remedial action. Note that rule imputes a duty onto the attorney, *requiring* the attorney to attempt to remedy the situation.

Which situations trigger this obligation? Only those that meet the three-pronged test set forth in section (b). A lawyer must act when a person affiliated with the client has violated, or intends to violate, an obligation to the entity and the violation is likely to injure the entity and is within the scope of the attorney's representation.

So, when a lawyer learns that an officer is about to do something harmful to the organization, what remedial action should the lawyer take? The rule provides the following guidance:

> *(c) Except where prior disclosure to persons outside the organization is required by law or other Rules, a lawyer shall first attempt to resolve a violation by taking measures within the organization. In determining the internal procedures, actions or measure that are reasonably necessary in order to comply with paragraphs (a) and (b), a lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, 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. Such procedures, actions and measures may include, but are not limited to, the following:*
>
> (1) *asking for reconsideration of the matter;*
>
> (2) *advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and*
>
> (3) *referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.*

When such a situation arises, the lawyer must first determine if the law or any other rule requires disclosure. For instance, the attorney must determine if anything in Rule 1.05 of the disciplinary rules mandates disclosure. (These obligations will be discussed later in the paper.)

If another law or rule does not require disclosure, then the lawyer should first take measures within the organization to remedy the situation. The lawyer should evaluate the scenario by considering the seriousness of violation and its consequences, the lawyer's role in the matter, the motive of the individuals involved, and any internal policies. Once this evaluation has been made, the attorney should consider the suggestions offered, including reconsideration, procuring a second legal opinion, or referral to higher authority within the organization.

Rule 1.12(d) states that, upon the resignation or termination of the attorney, the lawyer is excused from the remedial measures imposed by the rule, provided that the attorney ends the representation properly.[5] After the attorney-client relationship has ended, any further obligations of the attorney are governed by the rule addressing confidential information.[6]

Rule 1.12(e) imposes a duty on an attorney representing an entity to 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 needed to avoid misunderstanding.

For attorneys advising entities, questions regarding decision-making authority, confidentiality, and conflicting interests are almost assuredly going to arise during the course of the representation. The remainder of this paper will look at these issues, analyzing them from the perspective of an attorney representing a public entity.

VII. ***Decision-Making Authority***

One of the most challenging aspects of advising an entity is ensuring that the constituent from whom the lawyer is taking direction is the duly authorized agent of the organization. Asked simply: who gives the attorney his orders? In the case of representing a municipality, the city attorney must determine if it is the mayor, a councilmember, the city manager, or someone else who is authorized to give direction in any given situation. Often a city attorney will find himself representing numerous subsets of city government, from the planning commission to the parks board to the local ethics panel. Each of these boards and commissions will presumably have its own chairman, empowered with some degree of authority. Members of each board may seek the attorney's counsel, or attempt to direct the attorney's efforts. It is important, therefore, that the attorney remember that the city is his client, and be forthright in asserting that fact lest his role be misunderstood.

Consequently, an attorney should be ever mindful of the admonishments found in Comment 1 to Rule 1.12, which recognizes that an attorney should be concerned whether the constituent legitimately represents the interests of the organizational client.

VIII. ***Confidentiality***

Another challenging aspect of advising an entity is determining which communications made between the lawyer and constituents of the client are subject to the attorney-client privilege. In addition to Rule 1.12, it may be beneficial to turn to both the disciplinary rule governing confidentiality, as well as to the Rule of Evidence address the same matter.

Texas Rule of Evidence 5.03 sets forth the lawyer-client privilege. The general rule of privilege applies to communications between a lawyer and representatives of a client.[7] A representative of a client is defined as:

(A) a person having authority to obtain professional legal services, or to act on advice thereby rendered, on behalf of the client; or
(B) any other person who, for the purpose effectuating legal representation for the client, makes or receives a confidential communication while acting in the scope of employment for the client.[8]

[5] *See* Tex.Disc.R.Prof.Conduct 1.15.
[6] Tex.Disc.R.Prof.Conduct 1.05.
[7] Tex.R.Evid. 5.03(b).
[8] Tex.R.Evid. 5.03(a).

Courts have held that the subject matter of an attorney-client communication is immaterial when deciding if the privilege applies.[9] The privilege applies not only to legal advice, but attaches to complete communications between an attorney and the client.[10]

Rule 1.05 of the Disciplinary Rules of Professional Conduct sets forth the guidelines for confidential and privileged information. Confidential information includes both privileged information (that information of a client that is protected by the attorney-client privilege[11]) and unprivileged client information (that information relating to or furnished by a client, other than privileged information, acquired by a lawyer).[12]

Rule 1.05 sets forth the specific instances in which a lawyer may reveal confidential information. For the purposes of this paper, two merit consideration. First, a lawyer may reveal confidential information when the lawyer has reason to believe that it is reasonably necessary in order to prevent client from committing a criminal or fraudulent act.[13] Additionally, a lawyer may also reveal confidential information to the extent revelation reasonably appears necessary to rectify consequences of client's criminal or fraudulent act in the commission of which the lawyer's services had been used.[14]

When one of an organization's constituents communicates with the entity's lawyers, the communication is protected by the confidentiality requirements set forth in Rule of Professional Conduct 1.05. By way of example, Comment 3 to Rule 1.12 states:

> *"…if an officer of an organizational client requests its lawyers 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 1.05. The lawyer may not disclose to such constituents information relating to the representation except for disclosures permitted by Rule 1.05."*

In one case,[15] a court considered the status of a report written by an attorney who had been hired by a school district to conduct a fact-finding investigation and deliver a legal analysis of the matters investigated, including any potential liability facing the district. The Court of Appeals held that the entire report was subject to the attorney-client privilege, because the investigation was related to the rendition of legal services.[16]

If a city attorney is acting as an investigatory fact finder, he or she should explain to city staff that the confidentiality to which the staff has grown accustomed will not apply to conversations relating to the subject of the investigation. Often, city staff will have developed a level of candor with the city attorney and will operate under the assumption that all conversations are privileged, or at least confidential. In the role of fact finder, however, the attorney's obligation is to conduct a thorough

[9] *Marathon Oil Co. v. Moye*, 893 S.W.2d 585, 589 (Tex.App. – Dallas 1994, no writ).
[10] *In re Carbo Ceramics Inc*., 81 S.W.3d 369, 374 (Tex.App. – Houston [14th Dist.] 2002, no pet.).
[11] As set forth in Rule 5.03 of the Texas Rules of Evidence or Rule 5.01 of the Federal Rules of Evidence for United States Courts and Magistrates.
[12] Tex.Disc.R.Prof.Conduct 1.05(a).
[13] Tex.Disc.R.Prof.Conduct 1.05(c)(7).
[14] Tex.Disc.R.Prof.Conduct 1.05(c)(8).
[15] *Harlandale Independent School District v. Cornyn*, 25 S.W.3d 328 (Tex.App. – Austin, 2000).
[16] Id. at 334.

investigation rather than to render advice to constituents of the client. Accordingly, those constituents should know that relevant conversations with the city attorney are not confidential, and, in fact, are likely to be the subject of discovery in subsequent litigation. Those conversations may be utilized by opposing counsel to either establish liability, or, at the least, indicate bias on the part of the city attorney.

Another situation faced by many city attorneys was addressed in a recent land use case that focused on confidential communications in light of multiple clients[17]. In this case, as in many municipalities, the city attorney also acted as counsel for the local economic development corporation. The City of McKinney utilized eminent domain in order to acquire land to be used for a multi-purpose development project. The condemnation was contested, and discovery was conducted during the subsequent litigation. The developer argued that, with regard to certain documents, the City had waived its attorney-client privilege because it had disclosed the information to the McKinney Economic Development Corporation. The Court of Appeals held, however, that the privilege had not been waived. In reaching its conclusion, the Court wrote that "the privilege is not waived if the privileged communication is shared with a third person who has a common legal interest with respect to the subject matter of the communication[18]…Where the attorney acts as counsel for two parties, communications made to the attorney for the purpose of facilitating the rendition of legal services to the clients are privileged, except in a controversy between the clients."[19] The Court concluded that the city and economic development corporation shared a common interest regarding the development project.

IX. ***Conflicting Interests***

When representing an entity, there will inevitably be circumstances in which a constituent's personal interests differ from those of the entity as a whole. These situations are particularly challenging for the counselor. When an entity's interests become adverse to those of one or more of its constituents, a lawyer should advise the constituent that lawyer cannot represent constituent and that outside representation should be sought.

Often an attorney will be asked to advise an individual on whether a conflict of interest exists. This is particularly true for attorneys advising governmental entities, in situations where personal and public interests intersect. In Texas, such conflicts of interest are governed by state law.[20] Rendering advice on the conflicts of interest statute will be part of any city attorney's job. However, this can lead to a variety of ethical issues for the attorney. If, in seeking the attorney's opinion, a councilmember confides something to the attorney, is that information confidential? If the attorney determines a conflict exists for the official, but the officeholder disregards this conclusion, what limitations does an attorney face on disclosing the conflict? In such a circumstance, it becomes imperative that the attorney clarify his role, identity his true client, and explain to the individual constituent the limitations of his representation.

One relatively recent case highlights the importance of a city attorney clarifying his role when dealing with city employees. In

[17] *JDN Real Estate – McKinney L.P., Relator. In re City of McKinney, Relator*. 211 S.W.3d 907 (Tex.App. – Dallas, 2006).
[18] Id at 922, citing *In re Auclair*, 961 F.2d at 69.
[19] Id., citing *Harris v. Daugherty*, 74 Tex. 1, 6, 11 S.W. 921, 923 (1889).
[20] Tex. Loc. Gov't Code Ch. 171.

State v. DeAngelis[21], during an ongoing corruption investigation, an assistant city attorney tape-recorded conversations with an assistant police chief who was a subject of the investigation. During the assistant chief's subsequent prosecution for aggravated perjury, the trial court suppressed the recordings as privileged communications. The Court of Appeals agreed, holding that the conversations were subject to the attorney-client privilege, which is held by the client. In reaching this conclusion, the Court first determined that a privileged relationship existed between the officer and the attorney, who regularly advised individual police officers in their official capacity. The Court next considered the attorney's failure to clarify her role. The Court cited extensively from comment 4 of Rule 1.12, which reads:

> *"4. There are times when the organization's interests 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 should 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 discussion between the lawyer for the organization and the individual may not be privileged insofar as that individual is concerned."*

In *DeAngelis*, the Court focused on the assistant city attorney's failure to clarify her role. By allowing the officer to think that their communications were privileged, a confidential relationship was impliedly formed, and the officer was correct in assuming that the discussions were privileged. Had the attorney followed the admonishments in Comment 4 and advised the officer of the potentially adverse interests, the officer would have been in a better position to decide whether, and how much, to confide in the attorney.

In one of the few formal Professional Ethics Opinions[22] on the matter, the Professional Ethics Committee for the State Bar of Texas considered the following question: "*May a lawyer who represents a city render legal advice to an ethics board appointed by the city council regarding the investigation and determination of a complaint against a majority of the members of the city council?"* This type of scenario is not far-fetched for city attorneys. The answer given, however, reveals the underlying complexities of this relationship. The opinion initially considers the scenario (and seemingly endorses the questionable behavior) in light of Rule 1.12:

> *"The city attorney does not represent the individual city council members. Therefore, in representing the ethics board concerning charges against city council members, the city attorney will not violate [the conflict of interest rule]…Although representation of the ethics board may be materially and directly adverse to the interests of the members of the city council against whom the complaint has been filed, those city council members are not clients of the city attorney."*

[21] *State v. DeAngelis*, 116 S.W.3d 396 (Tex.App. – El Paso, 2003).

[22] Tex. Comm. on Prof. Ethics, Opinion 567 (February 2006).

However, the opinion then turns to analyzing the City Charter in light of Rule 1.06, which governs conflicts of interest, concluding that the representation at issue should be prohibited. Because the city attorney serves (and is compensated) at the pleasure of the city council, investigating *a majority* of the council would violate Rule 1.06, reasonably placing the attorney's own interests at odds with those of his client.

It should be noted that a lawyer *may* represent individual constituents subject to the conflict of interest rules.[23] Consent to conflicting representation must be given by appropriate official of the organization (as opposed to the one seeking individual representation).

X. ***Governmental Clients***

The comments to Rule 1.12 suggest that a higher ethical standard, or at least heightened scrutiny, may be appropriate for the attorney representing a governmental agency. Comment 9 states that "when 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." The comment goes on to recognize that government lawyers are often subject to specific statutes or regulations, further complicating the resulting obligations. Importantly, the comment states that, in case involving the conduct of government officials, Rule 1.12 does not limit the lawyer's "authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances."

XI. *Conclusion*

There is an indefinite number of complexities associated with providing legal counsel to an governmental organization which are compounded when the City Attorney considers performing an internal investigation. The City must consider the specific role of the investigation prior to commencing the investigation and determining the purpose for which it will be used. Then, the ethical considerations must be taken in to account as a City Attorney proceeds as either a legal advisor or fact finder.

Thankfully, the disciplinary rule addressing the representation of an entity contemplates these complexities, and attempts to provide practical guidance to guidance to attorneys facing these dilemmas. Especially for the government lawyer, who must deal with numerous elected and appointed panels, as well as employees of the organizational client, the potential ethical scenarios are limitless. Thankfully, Rule 1.12 provides some guidance with regard to the sensitive issues of the lawyer's role, decision-making authority, confidentiality, and conflicting interests. Above all, a lawyer advising a public entity should bear in mind the heightened standard that requires a delicate balance of client interest and public accountability.

[23] See Tex.Disc.R.Prof.Conduct 1.06, 1.07, 1.08, and 1.09.