

Ethics at City Hall: Role of the Municipal Lawyer



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Riley Fletcher Seminar – Dallas, TX
February 8, 2018

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What Parts Do You Play?

- Drafter
- Educator
- Advisor
- Investigator
- Enforcer



Part 1: Drafter



Municipal Codes of Conduct

Standards:

- Conflicts of Interest
- Gifts, Honoraria, Travel, Meals, Entertainment
- Outside Employment (offers, soliciting, moonlighting, revolving door)
- Representation of Others
- Improper Influence



Municipal Codes of Conduct

Standards:

- Abuse of Information
- Abuse of Resources
- Abuse of Position
- Hindrance (thwart or interfere)
- Disclosures
- Lobbyists
- Campaign Finance

Municipal Codes of Conduct

Complaints:

- Form Document
- Sworn Affidavits
- Statute of Limitations
- Investigations & Hearings
- Pre-Screening or Preliminary Hearings
- Ex Parte Communications
- Procedures, Rules, Rights

Municipal Codes of Conduct

Sanctions:

- Letters of Notification, Admonition, or Reprimand
- Recommendation for Censure or Removal from Position
- Deemed Ineligible for Appointment, or Contracting
- Reconsideration and Appeals
- Civil Penalties or Criminal Prosecution

Municipal Codes of Conduct

Dismissals:

- Frivolous Complaints
- Penalties and Legal Costs for Baseless Harassment
- Abuse of Process (civil tort action)
- Prosecution for Perjury

Part 2: Educator



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Professional Associations- *National*

ASPA Code of Ethics:

1. Advance the Public Interest
2. Uphold the Constitution and the Law
3. Promote Democratic Participation
4. Strengthen Social Equity
5. Fully Inform and Advise
6. Demonstrate Personal Integrity
7. Promote Ethical Organizations
8. Advance Professional Excellence



Professional Associations- *National*

International City Management Association Code of Ethics:

- **Tenet 12.** Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.



Professional Associations- *National*

IIMC- International Institute of Municipal Clerks:

- To so conduct my public and private life as to be an example to my fellow citizens;
- To be ever mindful of my neutrality and impartiality, rendering equal service to all and to extend the same treatment I wish to receive myself;
- To record that which is true and preserve that which is entrusted to me.



Professional Associations- *National*

American Planning Association AICP Code of Ethics

Members Shall Not:

- Advocate a Position Clearly Adverse to Prior
- As Salaried Employee Moonlight without Permission
- Accept pay from other related our public job
- Work on project for Employer that benefits Family member
- Use info to personal advantage
- Deliberately or recklessly misrepresent the qualifications or opinions of other professionals
- Influence Peddle



Professional Associations- *National*

APWA - American Public Works Association:

- I will keep the public trust and will not take personal advantage of privileged information or relationships.
- I will put public interest above individual, group, or societal interest and consider my chosen occupation as an opportunity to serve society.
- I will encourage sustainability through wise use of resources; whether they are natural resources, financial resources or human resources.



Professional Associations- *State*

Building Officials Association of Texas (BOAT):

- Accept no form of personal favors or gratuity for public services rendered and conscientiously avoid all circumstances that could compromise professional integrity and above all;
- Recognize the symbol of my office as a Building Official of public faith and acceptance of public trust to be held so long as to be true ethics of public service, constantly striving to achieve these objectives and ideas; ...



Professional Associations- *State*

Texas Municipal Human Resources Association:

- Shall not engage in any matters that would bring discredit upon public service.
- Shall act with honor, integrity, and virtue in all professional relationships.
- Shall refrain from knowingly being a party to or condoning any illegal or improper activity.
- Shall represent or report information in an impartial manner.
- Shall respect and protect privileged information to which they have access by virtue of their position.



Professional Associations- *State*

Texas Municipal Library Directors Association:

- We protect each library user's right to privacy and confidentiality with respect to information sought....
- We recognize and respect intellectual property rights.
- We treat co-workers and colleagues with respect, and fairness....
- We do not advance private interests at the expense of library users, colleagues, or our employing institutions.
- We distinguish between our personal convictions and professional duties, and do not allow our personal beliefs to interfere with fair representation of the aims of our institutions or the provision of access to their information resources.



Municipal Codes of Conduct

Sample Governing Body Code of Ethics

As a member of this governing body, I will:

- Represent the interests of all people served by this city.
- Not use the organization or my service for my own personal advantage or for the individual advantage of my friends or supporters.
- Keep confidential information confidential.

http://nmml.org/wp-content/uploads/code_of_ethics1.pdf



State Law

Statutory Prohibitions on:

- Dual Office Holding
- Resign to Run
- Nepotism
- Conflicts of Interest
- Gifts & Honoraria
- Abuse of Public Office
- Official Oppression
- Misuse of Public Info
- Misuse of Public Resources

- Bribery
- Coercion
- Open Meetings
- Open Records



Part 3: Advisor, Investigator & Enforcer



Professional Associations- *National*

ABA - Model Rule 1.13 Organization As Client:

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.



Who Is The Client?

- **ABA Rule 1.13 Organization as Client:**
- Texas Rules of Evidence 503(a)(1)
 - A client is a person, public officer, or corporation, association, or other organization or entity, either public or private who is rendered professional legal service by a lawyer, or consults with a lawyer with a view to obtaining professional legal services from that lawyer.



Are They Your Client?

- Comment 4 to Rule 1.12 of the Texas Disciplinary Rules of Professional Conduct, which generally mirrors ABA Rule 1.13, states: **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 the individual. . .**



Are They Your Client?

- This analysis will be judged based upon the facts at issue. Therefore, the decision of whether a warning should be given that the attorney does not represent a person should be carefully considered by the attorney so that a jury doesn't have to.

Who Do You Represent?

- **Client:** Entity
- **Client Representative:** Entity employees
- There are two basic approaches to whose communications with an entity's lawyer should be privileged:
 1. Subject matter test
 2. Control group test

Who Do You Represent?

- **Control Group Test:**
 - The status of the employee is dispositive in applying the privilege. Only if the employee has the status to make or take a part in decisions about entity actions are the communications privileged.
- **Subject Matter Test:**
 - The subject matter of the communication must be within the scope of the employee's duties and not disseminated beyond those who need to know.
 - Broad standard to ensure effective communication between entity employees and legal counsel.

Privilege / Attorney-Client Relationship

- Legal privileges, such as waiver of conflicts, attaches to the client. No attorney-client relationship is created through just a discussion with an individual, city official or staff, solely due to their position with the city.

Castro v. McNabb, 319 S.W.3d 721

- In order for privilege to attach to communications, there must be an attorney-client relationship. The fact that the City's charter prohibits such representation does not defeat the privilege.
- An attorney-client relationship can arise implicitly from the actions of the parties.

State v. Martinez, 116 S.W.3d 385

Official Immunity

- A public official is protected by official immunity from a suit arising from the performance of (1) discretionary duties (2) in good faith (3) within the scope of their authority.
- Official immunity applies to discretionary acts, such as those that involve personal deliberation, decision and judgment. This includes those decisions and judgments made by a professional in furtherance of the professional's job related duties, such as legal advice to a client.

Quinn v. Roach, 326 Fed. Appx. 280

- Official immunity does not apply if you act outside the scope of your duty as an employee to represent your client.

Welch v. Milton, 185 S.W.3d 586nt, the City.

Clarify Your Role & Beware of Assumptions

Typically, a lawyer does not have a duty to notify a person that the lawyer doesn't represent that person, unless:

1. The lawyer knows or should know the person falsely believes they are being represented.

- Absent such knowledge, there is no affirmative duty to deny.

Dillard v. Broyles, 633 S.W.2d 636

2. Based on the lawyer's conduct, a reasonable person would believe the person was represented by the lawyer.

- This is a question of fact for a jury to determine.

Moore v. Yarbrough, Jameson & Gray, 993 S.W.2d 760

Privilege in light of a Conflict of Interests

A city attorney has a duty to advise any official that conversations they have may not be privileged insofar as the official is concerned, if a conflict to the city's interest were to present itself in those conversations.

Texas Disc. R. Prof. Conduct 1.12



Acknowledgment to Carrollton City Attorney Meredith Ladd for her contributions to some of the material in this presentation.