

DEALING WITH THE CLIENT YOU CAN'T FIRE

Arthur ("Art") Pertile, III
PARTNER

OLSON OLSON LLP

Westport, Texas 75090 • 214-438-9000 • Houston, Texas 77019-1433
FAX 513-8900 • www.olsonolson.com

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WHO IS MY DADDY?



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- ◆ Mayor
- ◆ Councilmembers
- ◆ Board Members
- ◆ Managers
- ◆ Employees
 - ◆ Police Officers
 - ◆ Firefighters
 - ◆ Garbage truck drivers

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- ❖ A lawyer employed or retained by a governmental entity represents the entity.

Texas Disciplinary Rule of Professional Conduct, Section 1.12(e)

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- ❖ Olsonville and the Town of Olson form a Local Government Corporation named "Non Compos Mentis" to provide governmental services to both cities with the governing body appointed by both cities.
- ❖ The City Attorney for Olsonville is named General Counsel for "Non Compos Mentis."
- ❖ A matter comes before the "Non Compos Mentis" board that is good for "Non Compos Mentis," but will have a negative effect on Olsonville.

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- ❖ A lawyer employed or retained by a governmental entity represents the entity.

Texas Disciplinary Rule of Professional Conduct, Section 1.12(a); Ethics Committee Opinion 633

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I AIN'T NO SNITCH!



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- ❖ A lawyer representing a governmental entity must take reasonable remedial actions whenever the lawyer learns or knows that:

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- ❖ (1) an officer, employee, or other person associated with the entity has committed or intends to commit a violation of a legal obligation to the entity or a violation of law which reasonably might be imputed to the entity;
- ❖ (2) the violation is likely to result in substantial injury to the entity; and
- ❖ (3) the violation is related to a matter within the scope of the lawyer's representation of the entity.

Texas Disciplinary Rule of Professional Conduct, Section 1.12(b)

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HEADS:
I AM A COUNCILMEMBER



TAILS:
I AM A CRIMINAL DEFENSE LAWYER

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- Attorney serves as a City Councilmember of Olsonville.
- Attorney represents criminal defendants in Olsonville.
- City Council hires the City Manager that supervises the police department.

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- The City Council sets the police department budget.
- Olsonville police officers are witnesses for the prosecution in criminal cases.

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- ❖ Attorney is prohibited from representing criminal defendants in criminal courts in Olsonville unless his clients and the City Council of Olsonville consent to the representation. Also applies to Municipal Court Judges.

Texas Disciplinary Rule of Professional Conduct, Sections 1.06(b)(2) and 1.06(c); Ethics Committee Opinion 497
Texas Disciplinary Rule of Professional Conduct, Sections 1.11(a) and 1.06(c); Ethics Committee Opinion 541

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DID I JUST SHOOT MYSELF
IN THE FOOT?



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- ❖ Ethics Board ordinance creates board to investigate and review complaints against City officials and employees.
- ❖ The City Attorney represents Ethics Board.

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- ◆ The City Attorney is hired and compensation is set by the City Council.
- ◆ A Citizen files an ethics complaint against 5 of the 7 City Councilmembers.

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- ◆ The City Attorney cannot represent the Ethics Board in the investigation of a majority of the City Councilmembers.
- ◆ City Attorney's interest (in remaining as City Attorney), and the City's interest, are adverse.

Texas Disciplinary Rule of Professional Conduct, Section 1.06(b)(2); Ethics Committee Opinion 567

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- ◆ The City Attorney should not ask for City Council's consent to represent the Ethics Board because of the inherent conflict between said Board's responsibility and the City Attorney's personal employment interests.

Texas Disciplinary Rule of Professional Conduct, Section 1.06(c)(1); Ethics Committee Opinion 567

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PAY BACK IS A _____!



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- Lawyer, a former attorney in the City Attorney's office, was forced to resign last year.
- Lawyer represents a Client before a City Board in a matter unrelated to any areas she handled with the City.
- City's Ethics Ordinance prohibits former City employees from appearing before a City Board or Commission for two years after their resignation, unless on behalf of a relative.

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- The City's Ethics Board ordinance prohibits the lawyer from appearing before the Board because the prohibition applies to **all** former employees, not just lawyers.

Texas Disciplinary Rule of Professional Conduct, Section 5.06; Ethics Committee Opinion 551

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- YOU DO NOT HAVE TO GO HOME, BUT YOU HAVE TO GET OUT OF HERE!



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- ❖ Lawyer is a member of the Olsonville City Council.
- ❖ Lawyer's law partner has filed a lawsuit against Olsonville.
- ❖ Olsonville is holding an executive session to discuss the lawsuit.

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- ❖ Lawyer demands that he be allowed to attend the executive session when the lawsuit is being discussed.

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- ❖ City Council may invoke its attorney-client privilege and exclude Lawyer from the Executive Session regarding the litigation.

Texas Attorney General Opinion JM 1004



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I AM A CITIZEN AND THEY ARE **MY** COUNCILMEMBERS!



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- ❖ Lawyer sues Olsonville.
- ❖ Olsonville has tendered a settlement offer through its City Attorney.
- ❖ Lawyer calls Olsonville City Councilmembers to complain about the low settlement offer.

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- ❖ City Attorney requests that Lawyer not contact City Councilmembers regarding the litigation.

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- ❖ Lawyer is prohibited from communicating with City Councilmembers regarding the litigation.

Texas Disciplinary Rule of Professional Conduct, Section 4.02; Ethics Committee Opinion 474

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IF I COULD JUST CONFLICT OUT ALL THE LAWYERS IN TOWN, MY JOB WOULD BE SO MUCH EASIER!



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- ❖ Lawsuit is threatened against City of Olsonville.
- ❖ Olsonville is small city with limited number of lawyers.
- ❖ City Attorney proposes to Olsonville City Council a plan to retain all lawyers within the City so that there are no lawyers in town to sue City.

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- ❖ A City Attorney is prohibited from retaining all available local lawyers in order to prohibit opposition from hiring a local lawyer.

Texas Disciplinary Rule of Professional Conduct, Section 4.04; Ethics Committee Opinion 585

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WE ARE GOING TO SUE YOU AND YOU CAN'T HIRE OUR FORMER LAWYERS!



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- ❖ Olsonville and the Village of Olson are threatening to sue each other.
- ❖ Olsonville hires Best, Ng, Townes, LLP.
- ❖ Best, Ng, Townes, LLP. previously performed work for the Village of Olson unrelated to the current dispute.

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- ❖ No lawyers for Best, Ng, Townes, LLP, that performed any work for the Village of Olson, will be working on the current controversy.
- ❖ Best, Ng, Townes, LLP. asks the Village of Olson to consent to its the representation of Olsonville.

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- ❖ Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not, thereafter, represent another person in a matter adverse to his former client:

- (1) in which such other person questions the validity of the lawyer's services or work product for the former client;
- (2) if the representation in reasonable probability will involve a violation of Rule 1.05; or
- (3) if it is the same or a substantially related matter.

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◆ Best, Ng, Townes, LLP, may represent Olsonville in its dispute with the Village of Olson.

Texas Disciplinary Rule of Professional Conduct, Sections 1.09(a); Ethics Committee Opinion 578

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Arthur ("Art") Pertile, III
PARTNER

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Washington, D.C. 20004 • 202.331.4000 • New York, N.Y. 10019 • 212.331.4000 • www.olsonandolson.com
