Why Can't We All Just Get Along?

The Relationship between City Councils and EDC Boards

Frank J. Garza & Molly G. Solis

Davidson Troilo Ream & Garza, San Antonio

Texas City Attorney's Association

Summer Conference 2017

City Council vs. Economic Development Corporation
Conflict of Interest

I. What does the City Attorney stand when there is a conflict between the City and the EDC?

a.) Who is the client?

The city attorney, whether working for city as in-house counsel or outside contract attorney must ask who he or she represents. As a city attorney you can take direction from the mayor, city council members, city manager/administrator, city secretary, city staff and others. It is important to remember who you ultimately represent. You don't represent any individual, including the Mayor, the City Council members, or the city managers, etc. As a City Attorney you represent the City as a whole, the entity is your client. *See Texas Disciplinary Rules of Professional Conduct*, Rule 1.12.

Rule 1.12 Organization as a Client

(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.

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

(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 measures 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 lawyers 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 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.

(d) Upon a lawyer's resignation or termination of the relationship in compliance with Rule 1.15, a lawyer is excused from further proceeding as required by paragraphs (a), (b) and (c) and any further obligations of the lawyer are determined by Rule 1.05.

(e) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, 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.

Comment:

The Entity as the Client

1. **A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents.** Unlike individual clients who can speak and decide finally and authoritatively for themselves, an organization can speak and decide only through its agents or constituents such as its officers or employees. In effect, the lawyer-client relationship must be maintained through a constituent who acts as an intermediary between the organizational client and the lawyer. This fact requires the lawyer under certain conditions to be concerned whether the intermediary legitimately represents the organizational client.

2. As used in this Rule, the constituents of an organizational client, whether incorporated or an unincorporated association, include its directors, officer, employees, shareholders, members, and others serving in capacities similar to those positions or capacities. This Rule applies not only to lawyers representing corporations but to those representing an organization such as an unincorporated association, union, or other, entity.

Clarifying the Lawyer's Role

4. There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyers 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 discussions between the lawyer for the organization and the individual may not be privileged insofar as that individual is concerned. Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

5. A lawyer representing an organization may, of course, also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of Rule 1.06. If the organizations consent to the dual representation is required by Rule 1.06, the consent of the organization should be given by the appropriate official or officials of the organization other than the individual who is to be represented, or by the shareholders.

Decisions by Constituents

6. When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer knows, in regard to a matter within the scope of the lawyer's responsibility, that the organization is likely to be substantially injured by the action of a constituent that is in violation of law or in violation of a legal obligation to the organization. In such circumstances, the lawyer must take reasonable remedial measure. See paragraph (b). It may be reasonably necessary, for example, for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. At some point it may be useful or essential to obtain an independent legal opinion.

7. **In some cases, it may be reasonably necessary for the lawyer to refer the matter to the organization's highest responsible authority**. See paragraph (c)(3). Ordinarily, that is the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere, such as in the independent directors of a corporation. Even that step may be unsuccessful. The ultimate and difficult ethical question is whether the lawyer should circumvent the organization's highest authority when it persists in a course of action that is clearly violative of law or of a legal obligation to the organization and is likely to result in substantial injury to the organization. These situations are governed by Rule 1.05; see paragraph (d) of this Rule. If the lawyer does not violate a provision of Rule 1.02 or Rule 1.05 by doing so, the lawyer's further remedial action, after exhausting remedies within the organization, may include revealing information relating to the representation to persons outside the organization. If the conduct of the constituent of the organization is likely to result in death or serious bodily injury to another, the lawyer may have a duty of revelation under Rule 1.05(e). The lawyer may resign, of course, in accordance with Rule 1.15, in which event the lawyer is excused from further proceeding as required by paragraphs (a), (b), and (c), and any further obligations are determined by Rule 1.05.

Government Agency

9. The duty defined in this Rule applies to governmental organizations. However, 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. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. **Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole**. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This Rule does not limit that authority. See Preamble: Scope.

Derivative Actions

10. Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

11. The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with those managing or controlling its affairs.

II. What is an Economic Development Corporation?

An Economic Development Corporation (EDC) is a non-profit corporation established by a City for the purpose of supporting economic development within the City. The EDC uses sales and use tax dollars collected (created by an election to collect sales and use tax) to encourage different types of development within the City. *See Tex. Loc. Gov't.* §§ 501.054, 504.052, 505.252.

a. Types of EDC's

There are two types of EDC's. **Type A** EDC focuses on funding of land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements for creating jobs in the fields of manufacturing/industrial, research/development, military (including closure and realignment of bases), distribution, recycling, warehouse, and corporate headquarter facilities. *See* § 505.101. A Type A EDC is more restrictive on how the sales and use tax funds can be spent. *Id.*

Type B EDC can be used for all the projects/programs of a Type A EDC plus it can fund projects usually considered to be community development initiatives, including land, buildings, facilities, equipment, infrastructure for professional and amateur sports, parks, entertainment, tourism and affordable housing. *See* § §505.102-.104. Type B funds can also be used for development of water supply facilities and water conservation programs (if facility is approved by voters). *See* §§ 505.154, .304.

b. Board Membership

EDC funding is overseen by the corporation's Board of Directors and by the City Council. The board membership for each type of EDC is set by statute. A Type A EDC is required to have at least five members with NO statutory criteria for their selection (not required to be residents of the City). A Type B EDC is required to have seven members with certain statutory requirements of residency for their selection (with a few exceptions, required to be residents of the city). However, although number of directors and their terms are governed by statute **the City Council is the governing body that appoints the board members to the EDC board.** Further, EDC Directors have been deemed NOT to be "public officers" for purposes of common-law incompatibility. *See* Tex. Att'y Gen. Op. No. JC-0547 (2002). This is important because it means that **a city council member can be appointed and serve as a board of director for an EDC of the same City**. *See* Tex. Loc. Gov't Code §§ 504, 505. In addition, city council can vote to remove an EDC board of director without cause. *See* Tex. Loc. Gov't Code §§ 504.051 & 505.051.

c. City Council Oversight

An EDC once formed with operate based on bylaws passed by the EDC and also passed by City Council. The bylaws with set the amount of authority the EDC will have on expenditures without seeking city council approval. However, **City Council is required to approve all EDC programs and projects and most expenditures**. In addition, the City Council is required by statute to annually review the EDC's financial statements. Thus, City Council has access to the EDC's books and records at all times. *See* Tex. Loc. Gov't Code § 501.073. However, while both Type A and Type B EDC's are required to obtain approval by city council of the projects; there is no additional requirement for additional public notice or a public hearing on individual projects by a Type A EDC. Type B EDC's are subject to certain additional procedural requirements including providing public notice of a project and to hold a public hearing prior to pursuing the project and the public has 60 days to petition for an election regarding the project. *See* Tex. Loc. Gov't Code *§§* 504 *&* 505.

An EDC is not a part of a political subdivision and its directors are not public officers. The EDC is a separate entity, formed and filed as a non-profit corporation with the Secretary of State, with separate bylaws and board of directors to oversee the operation of the corporation. However, because the EDC is funded with sales and use tax dollars the city oversight is heavily intertwined with the EDC. The EDC works to benefit the entire city as a separate **entity** and therefore the interests of both entities are usually aligned. However, conflicts arise affecting both the City and EDC…

III. What types of conflicts?

a. There have been conflicts between City's and their EDC's involving:

- **i.** competing views on proposed projects;
- **ii.** competing views over contracts signed by EDC's that are subsequently not approved by City Council;
- **iii.** over cost sharing on infrastructure and developer incentives; and
- **iv.** interpretation of existing agreements and obligations.

b. If the City Attorney represents both the City and the EDC, no problem if both entities are aligned. How long will that last? When the City's and EDC's positions are not aligned, the City Attorney has an ethical dilemma because the City Attorney has been providing legal counsel to both entities as part of the duties as the City Attorney. Who does the City Attorney represent now? What entity is the client now? How does the City Attorney proceed?

IV. TDRPC Rule 1.06 Conflict of Interest

(a) A lawyer shall not represent opposing parties to the same litigation.

(b) In other situations and except to the extent permitted by paragraph (c), **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**.

(c) A lawyer may represent a client in the circumstances described in (b) 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**.

(d) A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.

(e) **If a lawyer has accepted representation in violation of this Rule, or if multiple representations properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules**.

(f) **If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct**.

Comment:

Loyalty to a Client

1. **Loyalty is an essential element in the lawyer's relationship to a client.** An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. **If such a conflict arises after representation has been undertaken, the lawyer must take effective action to eliminate the conflict, including withdrawal if necessary to rectify the situation**. See also Rule 1.16. When more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by this Rule and Rules 1.05 and 1.09. See also Rule 1.07(c). **Under this Rule, any conflict that prevents a particular lawyer from undertaking or continuing a representation of a client also prevents any other lawyer who is or becomes a member of or an associate with that lawyer's firm from doing so**. See paragraph (f).

2. A fundamental principle recognized by paragraph (a) is that a lawyer may not represent opposing parties in litigation. The term opposing parties as used in this Rule contemplates a situation where a judgment favorable to one of the parties will directly impact unfavorably upon the other party. Moreover, as a general proposition loyalty to a client prohibits undertaking representation directly adverse to the representation of that client in a substantially related matter unless that client's fully informed consent is obtained and unless the lawyer reasonably believes that the lawyer's representation will be reasonably protective of that client's interests. Paragraphs (b) and (c) express that general concept.

Conflicts in Litigation

3. Paragraph (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation are not actually directly adverse but where the potential for conflict exists, such as co-plaintiffs or co-defendants, is governed by paragraph (b). An impermissible conflict may exist or develop by reason of substantial discrepancy in the party's testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil.

The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of paragraph (b) are met. Compare Rule 1.07 involving intermediation between clients.

Conflict with Lawyer's Own Interests

4. **Loyalty to a client is impaired not only by the representation of opposing parties in situations within paragraphs (a) and (b)(1) but also in any situation when a lawyer may not be able to consider, recommend or carry out an appropriate course of action for one client because of the lawyer's own interests or responsibilities to others. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b)(2) addresses such situations. A potential possible conflict does not itself necessarily preclude the representation. The critical questions are the likelihood that a conflict exists or will eventuate and, if it does, whether it will materially and adversely affect the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. It is for the client to decide whether the client wishes to accommodate the other interest involved. However, the client's consent to the representation by the lawyer of another whose interests are directly adverse is insufficient unless the lawyer also believes that there will be no materially adverse effect upon the interests of either client. See paragraph (c).**

5. The lawyer's own interests should not be permitted to have adverse effect on representation of a client, even where paragraph (b) (2) is not violated. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See Rules 1.01 and 1.04. If the probity of a lawyer's own conduct in a transaction is in question, it may be difficult for the lawyer to give a client detached advice. A lawyer should not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Meaning of Directly Adverse

6. Within the meaning of Rule 1.06(b), the representation of one client is directly adverse to the representation of another client if the lawyer's independent judgment on behalf of a client or the lawyers ability or willingness to consider, recommend or carry out a course of action will be or is reasonably likely to be adversely affected by the lawyer's representation of, or responsibilities to, the other client. The dual representation also is directly adverse if the lawyer reasonably appears to be called upon to espouse adverse positions in the same matter or a related matter. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not constitute the representation of directly adverse interests. Even when neither paragraph (a) nor (b) is applicable,

a lawyer should realize that a business rivalry or personal differences between two clients or potential clients may be so important to one or both that one or the other would consider it contrary to its interests to have the same lawyer as its rival even in unrelated matters; and in those situations a wise lawyer would forego the dual representation.

Full Disclosure and Informed Consent

7. A client under some circumstances may consent to representation notwithstanding a conflict or potential conflict. However, as indicated in paragraph (c)(1), when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved should not ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the full disclosure necessary to obtain informed consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

8. Disclosure and consent are not formalities. Disclosure sufficient for sophisticated clients may not be sufficient to permit less sophisticated clients to provide fully informed consent. While it is not required that the disclosure and consent be in writing, it would be prudent for the lawyer to provide potential dual clients with at least a written summary of the considerations disclosed.

9. In certain situations, such as in the preparation of loan papers or the preparation of a partnership agreement, a lawyer might have properly undertaken multiple representation and be confronted subsequently by a dispute among those clients in regard to that matter. Paragraph (d) forbids the representation of any of those parties in regard to that dispute unless informed consent is obtained from all of the parties to the dispute who had been represented by the lawyer in that matter.

10. A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

11. Ordinarily, it is not advisable for a lawyer to act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated and even if paragraphs (a), (b) and (d) are not applicable. However, there are circumstances in which a lawyer may act as advocate against a client, for a lawyer is free to do so unless this Rule or another rule of the Texas Disciplinary Rules of Professional Conduct would be violated. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in a matter unrelated to any matter being handled for the enterprise if the representation of one client is not directly adverse to the representation of the other client. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for declaratory judgment concerning statutory interpretation.

Interest of Person Paying for a Lawyer's Service

12. **A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client**. See Rule 1.08(e). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after consultation and the arrangement ensures the lawyer's professional independence.

Non-litigation Conflict Situations

13. **Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.**

14. **For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation may be permissible where the clients are generally aligned in interest even though there is some difference of interest among them**.

16. A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

Conflict Charged by an Opposing Party

17. Raising questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with great caution, however, for it can be misused as a technique of harassment. See Preamble: Scope.

18. Except when the absolute prohibition of this rule applies or in litigation when a court passes upon issues of conflicting interests in determining a question of disqualification of counsel, resolving questions of conflict of interests may require decisions by all affected clients as well as by the lawyer.

V. Case Study

a. Little vs. Leon Valley EDC 2011-CI-17823

i. LVEDC wanted a development agreement to purchase real property from Mr. Little for a project in the "Town Center".
ii. LVEDC and City Council adopted Resolutions to approve a project plan and authorize negotiations of a Development Agreement.
iii. After lengthy negotiations between Little and LVEDC, agreement was reached. Communications and documents clearly established agreement was contingent on Council approval.
iv. City Council refused to approve the loan as part the agreement.
v. During the initial period, same firm represented both City and LVEDC.
vi. Controversy arose, city hired separate frim for LVEDC.
vii. EDC had agreement; City Council won't approve loan to complete agreement; Developer sued for breach.
viii. LVEDC (not city) sued for breach of contract. (In an earlier interlocutory appeal, Fourth Court held that that the trial court had subject matter jurisdiction over the case. 422 S.W.3d 37
ix. Case tried to jury and jury found that LVEDC intended to be bound by agreements and LVEDC failed to comply with the agreement. Little was awarded $1.5 million.
x. LVEDC appealed and Fourth Court of Appeals ruled in March 2017 that LVEDC was performing the governmental functions of a Type B corporation and therefore immune from any liability of those functions. (No. 04-15-0048-CV)
xi. Case has been appealed to Texas Supreme Court
xii. City of Leon Valley has eliminated LVEDC, terminated both firms and now has in-house city attorney.

b. Additional Scenarios

i. Former employee of the EDC filed suit against the City and EDC, alleging unequal pay, retaliation; and wrongful termination. (City of Alice)
ii. Border Brawl: McAllen vs. Hidalgo and Hidalgo EDC over Borderfest.

iii. Hidalgo Chamber of Commerce sues Hidalgo EDC and two EDC employees for breach of contract, when EDC decided to stop funding Chamber of Commerce.

VI. Conclusion

Although a City Attorney wears many hats, there will come a time where the City Attorney has to determine who to represent. It will be important to determine who you represent to determine who you will take direction from, and with whom you can discuss confidential matters, and whose interests you represent. When there is a dispute involving both a City and the City's EDC, the City Attorney has three options:

1. Represent the City and a separate attorney hired to represent EDC if such representation does not violate Rules 1.09 and 1.10.
2. Represent the EDC and a separate attorney hired to represent the City if such representation does not violate Rules 1.09 and 1.10.
3. Hire outside attorneys to represent the City and EDC on the issue at controversy but continue to serve both entities on all other matters.

Prohibition on such representation also applies to Civil Service Commissions, Board of Adjustment and other entities where a conflict may arise.