

Who is my client?

Boards, Commissions, Corporations, or City that Creates Them

- **Texas City Attorneys Association**
 - **Summer Conference 2026**
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Texas Disciplinary Rules of Professional Conduct 1.13 Organization as client; Cmt. 9 Gov't Agency

We report to, and accept direction from,
client constituents/representatives.

But our attorney/client relationship, and
the duties that go with it, is with the
organization.



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TDRPC 1.13 – Organization as client

When dealing with constituent representatives, we must be sure to explain our role as attorney for the entity, not the individual representative



“The thing is, I’m not your lawyer right now. You should probably stop talking.”


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TDRPC 1.06 Conflict of Interest

- May not represent two clients whose interests are materially and directly adverse
- If you represent multiple parties on a matter and a dispute arises, may not represent anyone, unless all consent



Train tracks

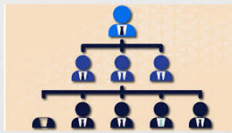
It's an ad for a **Funeral Service** 

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TDRPC 1.13 – Organization as client

But in a conflict between a client city and a constituent representative, we do not have to withdraw, instead we:

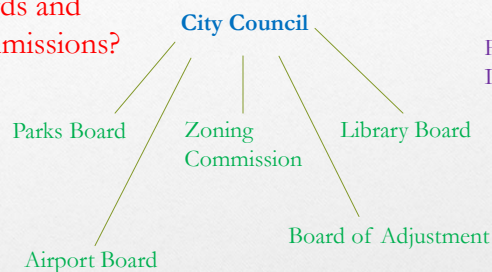
- ask for reconsideration,
- get a separate legal opinion, or
- go up the chain of command.



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Constituent Representative or New Client?

Boards and Commissions?



Friends of the Library, Inc.

City staff

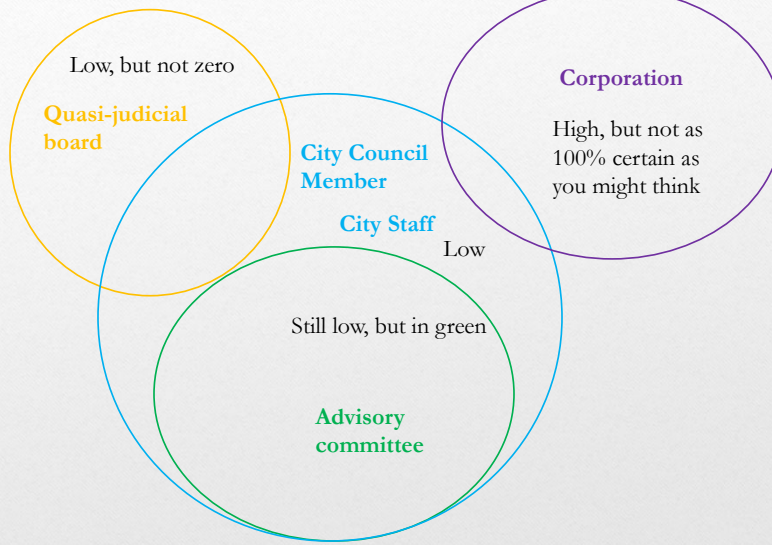
Corporations?

4A Economic Development Corp.

Housing Finance Corporation

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What is the risk you will have to withdraw?



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APPLIED ETHICS
Advisory Committees



You are part of the City,
and a faceless bureaucrat.
Take her away!

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Animal Shelter Advisory Cmtee.

H&S Code § 823.005

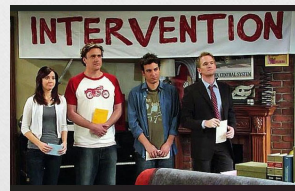
- Appointed by Council
- Advises Council on shelter issues
- No authority to make decisions (e.g. appeals, permits, etc.)



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Scenario

- City council removed a member for violating city ethics policy
- Chair calls for a meeting to discuss the decision
- Committee wants to keep member on and reject new appointee



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Texas Disciplinary Rules of Professional Conduct

- 1.13 Organization as client (e)

A lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituent and/or when explanation appears reasonably necessary to avoid misunderstanding.

Bless their heart



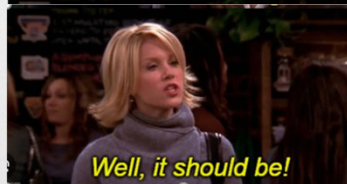
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Applied ethics

You want me to help you circumvent the council that appoints us both?

- Explain council is the ultimate authority
- Adv. Cmtee is not a separate client

Don't need to withdraw, but may need to leave the room



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APPLIED ETHICS: Quasi-judicial Boards



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Building and Standards Commission



LGC Ch. 54

- Commission appointed by council
- Enforces dangerous structures ordinances
- Appeals of rulings go to district court, not council



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Scenario

- Commissioner asks to speak in private before a meeting
 - Needs to recuse himself because he has a business relationship with property owner, a competitor of the mayor
 - Wants to keep the relationship quiet because he thinks the mayor is a vindictive SOB
 - You advise he needs to fill out the conflicts affidavit



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Scenario

- He elects not to attend the meeting
- Meeting canceled due to lack of a quorum
- Mayor asks you why

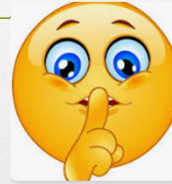


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Texas Disciplinary Rules of Professional Conduct

- 1.05 Confidentiality of Information

(b)(1) Except as permitted by par. (c) lawyer shall not knowingly reveal confidential information to a person the client has instructed is not to receive the information.



(c) A lawyer may reveal confidential information when expressly authorized to do so in order to carry out the representation.



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Member of commission asked for the info to not be given to the mayor

WHO'S THE BOSS?



Mayor is asking for the information



Questions

Do you owe a duty of confidence to the commissioner?

Can the mayor expressly authorize you to release information?

Is it necessary for the representation or is the mayor not acting in his mayoral capacity?

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Who's information is it?

Kennedy v. Gulf Coast Cancer & Diagnostic Ctr. at Se., Inc., 326 S.W.3d 352 (Tex. App.—Houston [1st Dist.] 2010, no pet.)

- Law firm hired to prepare memo for hospital, at the behest of general counsel Kennedy.
- Kennedy terminated by hospital
- Memo inadvertently provided to Kennedy before law firm became aware of his termination
- Kennedy wants to use memo in case against hospital
- Court rules – confidential information belongs to the client entity, not the employee who has possession

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Quasi-Judicial Board: Zoning Board of Adjustment

- A city council may appoint a board of adjustment (BOA) to hear and decide:

- 1) appeal of an order, requirement, decision, or determination made by an administrative official;
- 2) special exceptions to zoning ordinance;
- 3) a variance from zoning ordinance; and
- 4) other matters authorized by ordinance.



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Scenario

- City attorney advises BOA on open meetings, zoning laws/ordinances, Roberts' Rules, etc.
- City attorney advises city staff liaisons to BOA on zoning laws/ordinances, open meetings, etc.
- During BOA meetings, who is the client?



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Zoning Board of Adjustment

- Can city attorney still advise city staff?
 - BOA is a quasi-judicial entity, independent of staff
 - BOA can issue findings/orders overruling city staff
- Can city attorney cross examine applicant?
 - Due process requires a meaningful hearing, i.e. board is objective and not pre-disposed towards staff
- Can city attorney cross examine city staff?
 - Loyalty to the primary client can create a conflict of interest

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Quasi-Judicial Boards What's the Appeal?

Appeal of a BOA decision can be filed in district court by:

1. an aggrieved party
2. a taxpayer
3. an officer, department, board, or bureau of the municipality

If the city sues its own
BOA, what are the
ethical consequences?



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Hold up, for real? A city can sue its own BOA?

Yes

- *Sanchez v. Bd. of Adjustment*, 387 S.W.3d 745, 750, (Tex. App. 2012, pet denied).
- San Antonio revoked a permit, company appealed to BOA. BOA overturned 9-2.
- Appellants: i. Sanchez, Dir. Planning and Development Svcs.; ii. Planning and Dev. Svcs. Dept., and iii) City of San Antonio appellants
- Appellee: San Antonio Board of Adjustment and applicant

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Despite not having a corporate existence, the BOA is actually a party?

Tellex v. City of Socorro, 226 S.W.3d 413, 414, (Tex. 2007)
Zoning boards are the proper party to an appeal as they must be served with the writ, file a verified answer, and pay costs if found to have acted in bad faith.

LIT HW 1, L.P. v. Town of Flower Mound, 2013 Tex. App. LEXIS 944, *12, 2013 WL 362760 (Tex. App.—Ft Worth 2013, no pet. h.)

A city is not a proper party because the only relief is to uphold, reverse, or modify the board's decision. If no separate relief is sought against the city, it is not a proper party.

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Texas Disciplinary Rules of Professional Conduct

- 1.06 Conflict of Interest: General Rule
- A lawyer shall not represent opposing parties to the same litigation.

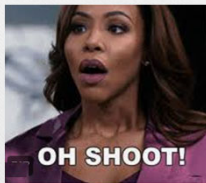


But see also....

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TDRPC 1.09 Conflict of Interest: Former client

- A lawyer who formerly represented a client cannot represent another person adverse to the client in the same or a substantially related matter, unless the former client gives informed consent, confirmed in writing.



Now I have to withdraw

Or do I??



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Applied Ethics

- Can the City Attorney file/pursue the appeal?
- Who files the answer for the BOA
- Can the City Attorney appoint outside counsel?
- If the City has appointed outside counsel, can the City Attorney advise city council regarding status?



“We will appoint you the dumbest
***** lawyer on Earth!”



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APPLIED ETHICS


Corporations



Obviously a separate client...or is it?

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Non-profit 501(c)(3)

- City creates a nonprofit to run animal shelter
 - City attorney drafts the formative documents
 - Bylaws create a 3 person board, mayor and 2 others appointed by Council
- 
- Shelter on city owned land
 - City provides funding
 - City approves budget

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Scenario

- Mayor asks you to attend board meetings, draft documents, and advise shelter board and shelter staff as issues arise.



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WHOM DO YOU SERVE?

City: city attorney, representing the city's interests with a constituent representative of the city?

Shelter: new/separate client, to which you are providing legal advice with the informed consent of both clients?



Even though shelter is a separate entity, this is not a foregone conclusion

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In re Murrin Bros. 1885, Ltd., 603 S.W.3d 53, 58, (Tex. 2019)

Parties are not adverse by virtue of labels.

The proper inquiry is whether the substance of the challenged representation requires the lawyer to take conflicting positions or to take a position that risks harming one of his clients.



Adversity is a product of the likelihood of the risk and the seriousness of its consequences

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IS THE NPC A NEW CLIENT?

Yes

- City and Shelter are nominally separate
- Shelter has independent spending authority
- Shelter pays legal fees?

No

- City controls board, and it serves a municipal purpose
- City approves budget, provides funding
- City pays legal fees?



- May not be a separate client, but you must be clear about your role



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Scenario, Modified

- Non-profit created by City and County
- Board originally mayor, Judge, and a third member they select
- Expanded by four more members selected by Board
- Board wants you to act as attorney for shelter



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TDRPC 1.07 Conflict of interest: Intermediary

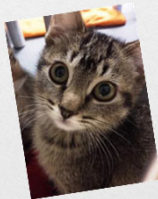
- May not serve as intermediary between two clients unless
 - a. Both clients are consulted
 - b. The matter will not involve litigation
 - c. Lawyer can represent both equally, without prejudice to either
- Must withdraw if situation changes or either party asks, at which point may not represent either party



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TDRPC: 1.06 Conflict of Interest General Rule

Cmt. 14 - Loyalty is an essential element in the lawyer's relationship to a client



Rule 1.13 says you must be clear with client constituent members about your role, and who is the client

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Can you serve both clients?

Judgy-Husky says "No"

Loyalty to City

- Cannot serve both equally

Potential conflicts:

- Ground lease, Annual Budget

Potential adversity:

- Bd no longer under gov't contr
- Multiple constituents (County, donors)



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Transportation Code Local Government Corporation

- Transp. § 431.101
- Board of Directors appointed by city council
- Subject to open bidding rules applicable to city
- City council may assume the rights, responsibilities, assets, and liabilities of the corp.



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Scenario

- Big OP Building, Inc. created by your client city to build and manage a flex warehouse space for economic development
- 5 member Bd of directors appointed by city council
- City and BOB want an ILA
- Can you prepare it?

Yes, but

Are you an intermediary, or still acting as city attorney?



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Scenario

City attorney:

- BOB assets are City assets
- Entity controlled by council
- Entity serving a municipal purpose

If so: must be clear with BOB board on your role

Intermediary:

- Both clients must approve in writing
- Must be able to provide both with equal representation
- No chance of litigation

Need to withdraw if asked



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A conflict arises

- Board meeting called to discuss selecting a builder, 2 members absent
- Chair and another member have a “relationship” with Shady, no affidavit
- Chair of board moves to select Shady Contractor, LLC to build the building, w/o public bidding
- Chair argues sole source rule applies
- 2-1 vote to award kx w/o bidding to Shady
- Guess which 2



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APPLIED ETHICS

Duty of loyalty

Do you need to do something to protect the city?

Confidentiality

Who can you talk to without violating atty/clt privilege?

Conflict of interest?

Do you have to withdraw as attorney for BOB, Inc? City?



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APPLIED ETHICS

A client constituent is about to harm the client, i.e. illegally spend money. You have an obligation to take action:

- Ask them to reconsider
- Ask them to get a second opinion
- Go up the chain of command

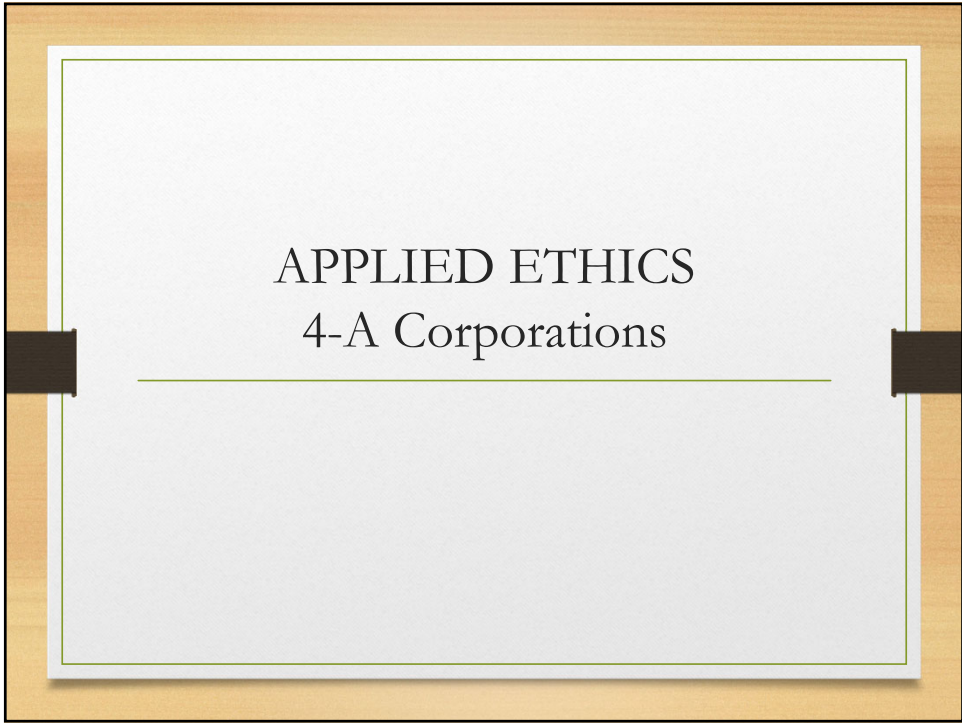


Who is the highest authority that can act on behalf of Bob, Inc.?

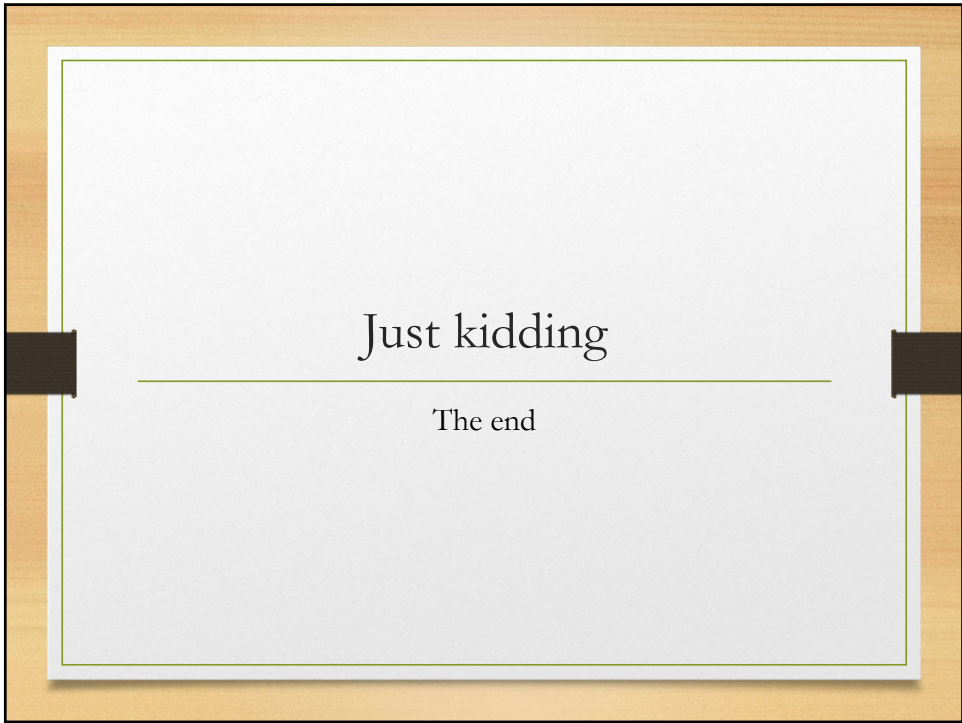
- Board
- City Manager
- City Council



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