International Municipal Lawyers Association
2012 Annual Conference
Austin, Texas

Work Session XV: Ethics
"The Ethical Challenges of Representing Organizations"

Ross Fischer
Gober Hilgers PLLC
www.goberhilgers.com
rfischer@goberhilgers.com

I. Introduction: *The don'ts and don'ts*

Of the fifty-seven substantive rules that comprise the American Bar Associations Model Rules of Professional Conduct for Lawyers, thirty-six rules include the prohibitive phrase "a lawyer shall not." It is difficult to imagine a more prescriptive document. The list of things a lawyer shall not do is made abundantly clear by the Rules, a few examples of which are found below:

A lawyer shall not counsel a client to engage in criminal or fraudulent conduct[1];
A lawyer shall not reveal client information[2];
A lawyer shall not bring a frivolous proceeding[3];
And so on….

Those rules that don't use this prohibitive phrase generally tend to either convey some generalized duty (a lawyer shall communicate with his client, act with reasonable diligence, report misconduct, etc.) or to address some administrative matter (the responsibility of law firm partners, advertising guidelines, bar admission, and so on).

Perhaps the only rule that goes beyond being either a restriction or an aspiration is Rule 1.13 "Organization as Client." Unlike most model rules of conduct, Rule 1.13 is direct, yet anticipates likely real-world problems and offers advice for addressing these issues when they arise. The rule offers practical suggestions, implicitly recognizing the ambiguities and uncertainties inherent in representing an organization. Legal practitioners who advise entities should be grateful for the guidance provided by the rule, because this type of representation is fraught with complexities.

II. 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 1.13 anticipates these types of problems, and attempts to provide guidance to attorneys facing them. The rule is composed of multiple parts, designed to identify the true client; to anticipate problem areas likely to arise, and to set forth remedial measures an attorney should take to address these problems.

III. Breaking Down the Rule

The first paragraph of Rule 1.13 reads as follows:

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

---

[1] MODEL RULES OF PROF'L CONDUCT R. 1.2(d) (2010).
[2] *Id.* R. 1.6(a).
[3] *Id.* R. 3.1.

First, the rule makes it clear that the lawyer represents the entity, as distinct from its individual "constituents". Second, the rule recognizes the reality that an attorney providing legal representation will interact with individuals within the entity.

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. The comments to the rule recognize the inherent difficulty associated with this situation: namely, that an organization can only speak, act and decide through its members.[4] The result is an attorney-client relationship in which the client is always represented by intermediaries. Accordingly, a lawyer should be concerned with whether the intermediary legitimately represents the organizational client.

The second section of Rule 1.13, which anticipates potential misconduct by an organization's officers or employees, reads as follows:

> (b) *If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.*

Upon dissection of this section, it becomes clear that this portion of the rule addresses several important areas: it contemplates the conflicts that arise between an organization and its members; it identifies the situation in which a lawyer *must* take remedial action; and it provides guidance for the type of remedial action to be taken. Note that the rule, in certain circumstances, imputes a duty onto the attorney, *requiring* the attorney to attempt to remedy the situation.

Which situations trigger this obligation to take remedial action? Only those circumstances that meet the test set forth in section (b). A lawyer must act when: (1) a person affiliated with the client has violated, or intends to violate, an obligation to the entity; (2) the violation is likely to injure the entity; and (3) the matter is related to the attorney's representation.

Rule 1.13's commentary provides that in determining how to proceed under this subsection, the lawyer should evaluate the scenario by considering the seriousness of violation and its consequences, the motive of the individuals involved, any internal policies, and any other relevant consideration.[5]

So, when a lawyer learns that an officer is harming or about to do something harmful to the organization, what remedial action should the lawyer take? The rule clearly favors an internal resolution to such issues, directing that a lawyer *shall* refer the matter to a higher authority – and ultimately to the highest authority - within the organization.

But what if the lawyer's efforts to resolve the issue within the organization are unsuccessful? Subsection (c) of the rule provides that, if:

[4] *Id.* R 1.13 cmt. [1].
[5] *Id.* R. 1.13 cmt. [4].

(1) Despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law; and
(2) The lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not Rule 1.6[6] permits such disclosure, but only to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

So, after establishing those limited scenarios where a lawyer is required to refer a matter for resolution within the organization, it helpfully goes on to outline those circumstances that would permit a lawyer to reveal confidential information.

In Rule 1.13(d), it is made clear that the authority to reveal confidential information is inapplicable in situations where the lawyer has been tasked with investigating an alleged violation of law, or defending the organization (or its constituent) against a claim arising out of an alleged violation of the law.

Rule 1.13(e) enables a lawyer who reasonably believes that he or she has been discharged because of the lawyer's efforts to prevent or rectify a harm to the organization to proceed as necessary to assure that the organization's highest authority is aware of the lawyer's discharge or withdrawal.

Rule 1.13(f) imposes a duty on an attorney representing an entity. In dealing with the organization's constituents, a lawyer must 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.

Rule 1.13(g) recognizes that an organization's lawyer may also represent any of that entity's constituents, provided that the representation does not run afoul of the applicable conflict of interest rules. If consent is required for the dual representation, the consent must be given by an appropriate official within the organization (other than the individual who is to be represented).

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.

IV. 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.

[6] *Id.* R 1.6 (governing confidentiality of information).

Consequently, an attorney should be concerned with whether the constituent legitimately represents the interests of the organizational client.[7] For the municipal lawyer, the authorized decision-maker may depend on the type of municipality being represented: Is a city manager charged with directing the legal affairs of the City? Does the mayor act as the City's chief executive officer? Are all policy decisions to be made by a majority of the Council? Is legal strategy being directed by a staff attorney? Does the city have a charter provision or administrative ordinance designating the officer responsible for making such decisions? These are all relevant questions when determining who is authorized to direct the rendition of legal services for a municipality.

V. 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 1.13, it may be beneficial to turn to both the disciplinary rules governing confidentiality.

Confidential Communications

Courts have held that the subject matter of an attorney-client communication is immaterial when deciding if the privilege applies.[8] The privilege applies not only to legal advice, but attaches to complete communications between an attorney and the client.[9]

Rule 1.6 of the Model Rules of Professional Conduct sets forth the guidelines for the maintenance of confidential and privileged information. The rule sets forth a broad prohibition against the revelation of "information relating to the representation of a client unless the client gives informed consent."[10] This encompasses more than privileged information; it applies to any information relating to the representation. Courts have held that the subject matter of an attorney-client communication is immaterial when deciding if the privilege applies.[11] The privilege applies not only to legal advice, but attaches to complete communications between an attorney and the client.[12]

When one of an organization's constituents communicates with the entity's lawyers, the communication is protected by the confidentiality requirements set forth in Model Rule 1.6.[13] By way of example, Comment 2 to Rule 1.13 continues:

> *"[I]f an officer of an organizational client requests its lawyer 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 1.6."*

Rule 1.6 also 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 the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services.[14] Additionally, a lawyer may also reveal confidential information to prevent, mitigate or rectify substantial

---

[7] In the corresponding rule found in the Texas Disciplinary Rules of Professional Conduct, the comments affirmatively exhort an attorney representing an entity to "be concerned whether the intermediary legitimately represents the organizational client." Tex. Disciplinary R. Prof'l Conduct 1.12 cmt. 1.
[8] *Marathon Oil Co. v. Moye*, 893 S.W.2d 585, 589 (Tex. App.—Dallas 1994, no writ).
[9] *In re Carbo Ceramics Inc*., 81 S.W.3d 369, 374 (Tex. App.—Houston [14th Dist.] 2002, no pet.).
[10] MODEL RULES OF PROF'L CONDUCT R. 1.6(a).
[11] *Marathon Oil Co. v. Moye*, 893 S.W.2d 585, 589 (Tex.App. – Dallas 1994, no writ).
[12] *In re Carbo Ceramics Inc*., 81 S.W.3d 369, 374 (Tex.App. – Houston [14th Dist.] 2002, no pet.).
[13] *Id.* R. 1.13 cmt. 2
[14] *Id.* R. 1.6(b)(2).

injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.[15] In other words, a lawyer may reveal confidential information to prevent or rectify a criminal or fraudulent act that is likely to result in injury and during which the lawyer's services were utilized.

These two particular situations that permit revelation of sensitive information resemble the remedial discretion afforded by Rule 1.13 to an attorney representing an entity. Both Rule 1.6 and Rule 1.13 contemplate permissive disclosure in instances where a client representative is harming or intends to harm the client, and where the lawyer's services have been utilized in preparing for or perpetrating the fraudulent act.

Attempt to Resolve Issues within the Organization

As noted earlier, Rule 1.13(b) clearly expects an entity's lawyer to first address harmful behavior within the organization, and that disclosure of confidential information should be a last resort. One cautionary case involves general counsel for the Office of the State Banking Commissioner of Kansas.[16] In that case, the agency's general counsel suspected an agency employee of violating both federal banking law and the office's internal ethics code. Rather than reporting the suspected misconduct to the banking commissioner, the general counsel made a report to the FDIC directly. The general counsel was subsequently terminated by the banking commissioner. In her subsequent whistleblower case, the trial court focused on the attorney's disregard for Rule 1.13, that the direct reporting to the FDIC was contrary to the Model Rules of Professional Conduct and that there was no justification for her failure, as general counsel, to advise the banking commissioner.[17] The trial court went on to note that "no exigency required plaintiff to avoid the procedures set forth in MRPC 1.13(b)…to counsel her client" and that the attorney's action "were not the reasonable acts of an attorney toward her clients."[18] Consequently, the general counsel had no duty or privilege to disclose confidential information until she had satisfied Rule 1.13(b).[19] On appeal, the Supreme Court of Kansas agreed, noting that an "organization's attorney has a responsibility to give advice when necessary to prevent or rectify unlawful or improper acts of the organization and its employees. This advice must be given by presenting the attorney's opinion to the proper person or persons in the organization who have the authority to correct the problems."[20] The Court concluded that "although the plaintiff may have acted in the utmost good faith, she used poor judgment and did not take steps available to her that a reasonably prudent attorney would have taken prior to reporting what she suspected to be violations to the FDIC, thus destroying her effectiveness as counsel" for the agency.[21]

Investigations

It is important to remember that the disclosure authorized by Rule 1.13 does not apply in situations where the entity's lawyer is conducting an investigation on behalf of the entity or is defending the entity.

In a Texas case[22] litigated pursuant to that state's public information act, 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.[23]

---

[15] *Id.* R. 1.6(b)(3).
[16] *Crandon v. State*, 257 Kan. 727 (1995).
[17] *Id*. at 733.
[18] *Id.* at 735.
[19] *Id.*
[20] *Id.* 741-42.
[21] *Id.* 742.
[22] *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin, 2000).
[23] *Id.* at 334.

In a federal criminal case, two corporate officers received subpoenas from a federal grand jury.[24] As a result, the corporation ordered its in-house counsel, in conjunction with local counsel, to conduct an internal investigation, including employee interviews. It was not until four months after the issuance of the subpoenas, and after several interviews, that the corporate officers were advised to retain their own counsel. In the subsequent criminal proceeding, the corporate officials sought to assert the attorney-client privilege and to prevent disclosure of their conversations with corporate counsel. The court found that the individual officers were justified in believing that the corporate counsel was there to protect their individual interests as well as those of the corporation, and therefore entitled to assert the attorney-client privilege.[25] In a footnote, the court noted that "under Rule 1.13(d) of the ABA Model Rules of Professional Conduct, [corporate counsel] should have informed the defendants at the inception of their conversation that any revelations made by them might not be covered by the privilege in the event that [the in-house counsel] decided that they should obtain separate counsel, which he ultimately did advise."[26] (This duty to clarify imposed by Rule 1.13 is discussed in more detail below in *State v. DeAngelis*.)

While a corporate official who is the subject of an internal investigation may, under the right circumstances, be able to assert the attorney-client privilege to prevent disclosure of communications, that person is not necessarily entitled to review otherwise privileged information. Consider the case of a bank officer who filed for personal bankruptcy, triggering an investigation of his personal finances by the bank's attorney.[27] After his removal as a director of the bank, he sought to compel the production of documents relating to the investigation. The court concluded that "[w]hile it is true that the corporation can only act through human beings, and the authority to assert and waive privileges rests with management, a dissident director is not management. Such a director has no authority to frustrate the attorney-client privilege asserted by the corporation when such an assertion is in opposition to the will of the majority of directors."[28]

Selective Disclosure

Another situation faced by many city attorneys was addressed in a land use case that focused on confidential communications in light of multiple clients.[29] 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."[30] "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."[31] The Court concluded that the city and economic development corporation shared a common interest regarding the development project.

---

[24] *United States v. Hart*, No. Crim. A. 92-219, 1992 WL 348425 (E.D. La. Nov. 16, 1992).
[25] *Id.* at *2.
[26] *Id.* at *2 n 1.
[27] *In re Hutchins*, 216 B.R. 11 (Bkrtcy. E.D. Ark. 1997)
[28] *Id.* at 15-16.
[29] *JDN Real Estate–McKinney L.P., Relator. In re City of McKinney, Relator.* 211 S.W.3d 907 (Tex. App.—Dallas, 2006).
[30] *Id.* at 922 (citing *In re Auclair*, 961 F.2d 65, 69 (5th Cir. 1992)).
[31] *Id.* (citing *Harris v. Daugherty*, 74 Tex. 1, 6, 11 S.W. 921, 923 (1889)).

VI. Clarifying the Lawyer's Role & Handling Conflicts of Interest

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 the constituent and that outside representation should be sought.

Clarifying the Lawyer's Role

One Texas case highlights the importance of a city attorney clarifying his or her role when dealing with city employees. In *State v. DeAngelis*,[32] 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, as imposed by the corresponding rule found in the Texas Disciplinary Rule of Professional Conduct. The Court cited extensively from a comment found in the corresponding Texas rule, which is identical to the language found in Comment 10 of Model Rule 1.13, and which reads:

> *"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 the comment to the rule 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.

Identifying Conflicting Interests

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. 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

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

that the attorney clarify his role, identify his true client, and explain to the individual constituent the limitations of his representation.

Navigating adverse interests among an entity client and its individual constituents can be difficult, and there is often little directly applicable guidance. Often, scenarios must be analyzed not only in light of the lawyer's duty to the entity, but must be read in conjunction with applicable conflict and confidentiality rules founds elsewhere. In Texas, one ethics opinion[33] by 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 the rule addressing organizations as clients:

> *"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 interests 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."*

However, the opinion then turns to analyzing the City Charter in light of rule governing 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 the conflict of interest rule, reasonably placing the attorney's own interests at odds with those of his client.[34]

Another case illustrating the potential pitfalls of organization lawyers and their dealing with individual employees or members deals with the role of the in-house attorney in an internal grievance process. In a case involving the music licensing organization ASCAP,[35] a member of the organization disclosed certain financial information to and sought the assistance of ASCAP's staff attorneys. When the member subsequently utilized the organization's internal grievance process, he alleged that the staff legal counsel was precluded from representing the organization in the process, alleging that a conflict of interest existed because the attorneys also represented him. The Court found that both in-house and outside counsel for ASCAP, even if representatives of individual members for some purposes, had no conflict of interest requiring them to recuse themselves from representation of the organization in the member's grievance proceeding, because counsel had never represented the member individually and, when made aware of the member's conflict claim, expressly informed him that they were not representing him.[36]

It should be noted that, where no adversity exists between an entity and its constituent, a lawyer *may* represent individual constituents subject to the conflict of interest rules.[37] Consent to conflicting representation must be given by appropriate official of the organization (as opposed to the one seeking individual representation).

---

[33] Tex. Comm. on Prof'l Ethics, Op. 567 (Feb. 2006).

[34] *See* MODEL RULES OF PROF'L CONDUCT R. 1.7(a)(2) (prohibiting a lawyer from representing a client when there exists a "concurrent conflict of interest" –a term that includes a situation where the lawyer's representation would be materially limited by the lawyer's own personal interests)

[35] *United States v. American So. of Composers, Authors and Publishers*, 129 F. Supp.2d 327 (2001).

[36] *Id*. at 336-37.

[37] *See* Tex. Disciplinary R. Prof'l Conduct 1.06, 1.07, 1.08 and 1.09.

VII. Governmental Clients

The comments to Rule 1.13 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 "in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to questions such conduct more extensively than that of a lawyer for a private organization in similar circumstances." For instance, federal and state laws set forth conduct and offenses applicable only to public servants; examples include state laws establishing offenses against public administration (usually covering bribery and improper gifts), while federal law also addresses these same issues as they relate to federal officers and employees.[38] Comment 9 to Rule 1.13 goes on to suggest 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.

VIII. Conclusion

There is an indefinite number of complexities associated with providing legal counsel to an organization. The relationship between attorney and client is more complicated than when representing an individual. Thankfully, the disciplinary rule addressing the representation of an entity contemplates these complexities, and attempts to provide practical 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 1.13 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.

[38] 18 U.S.C. § 201 *et seq*. ("Bribery, Graft, and Conflicts of Interest").