

DEALING WITH THE CLIENT YOU CAN'T FIRE

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DEALING WITH THE CLIENT YOU CAN'T FIRE

WHO IS MY CLIENT?

DEALING WITH THE CLIENT YOU CAN'T FIRE

- ❖ 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(a)

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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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- ❖ Attorney A serves as a City Councilmember of Olsonville.
- ❖ Attorney A 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 A is prohibited from representing criminal defendants in criminal courts in Olsonville unless his clients and the City Council of Olsonville consent to the representation.

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

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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.

City Attorney represents ethics board.

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City Attorney is hired by City Council and compensation is set by City Council.

Citizen filed 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 City Attorney, and City's interest are adverse.

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

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City Attorney should not ask for consent because of the inherent conflict between the ethic 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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I AM AN OLSONVILLE CITY
COUNCILMEMBER AND I HAVE
RIGHTS!

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Lawyer A is a member of the Olsonville City Council.

Lawyer A's law partner has filed a lawsuit against Olsonville.

Olsonville is holding an executive session to discuss the lawsuit.

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

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The City Council may invoke its attorney-client privilege and exclude Lawyer A 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 A sues Olsonville.

Olsonville has tendered a settlement offer through its City Attorney.

Lawyer A calls Olsonville City Councilmembers to complain about the low settlement offer.

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

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Lawyer A 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 Olsonville.

Olsonville is small city with limited amount of lawyers.

City Attorney proposes to Olsonville City Council a plan to retain all lawyers in city so that there are no lawyers in town to sue city.

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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 work on the current controversy.

Best, Ng, Townes, LLP. asks the Village of Olson to consent to the representation.

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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 the 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 the dispute with the Village of Olson.

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

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ARTICLE 16 SECTION 1 TEXAS CONSTITUTION.

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"I, Olsonville Councilmember, do solemnly swear that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money **or thing of value**, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

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HOW TO BE A GOOD CLIENT IN THE FIRST PLACE!

Chapters 171 and 176

Scott Houston
Deputy Executive Director and General Counsel



Local Gov't Code Chapter 171 CONFLICTS OF INTEREST

Who is subject to Chapter 171?

“Local public officials,” including: members of the city council and other officers who exercise responsibilities that are more than advisory in nature.

Chapter 171

Two Types of Conflict of Interest

1. Substantial Interest in a *Business Entity*: Conflict due to an official's substantial financial interest in a "business entity" that has an issue before his/her governmental unit.
2. Substantial Interest in *Real Property*: Conflict due to an official's substantial financial interest in "real property" that would be affected by his/her governmental unit's action.

Chapter 171

Substantial Interest in a Business Entity

A person has a substantial interest in a business entity if the person has a(n):

- *Stock Interest*: own 10 % or more of the total voting stock or shares
- *Other Ownership Interest*: owns either 10% or more, or \$15,000 or more, of the fair market value of the business entity
- *Income Interest*: receives more than 10% of his/her gross income for the previous year from the business entity;
- *Close family member w/ any of the above interest*: close relative within the 1st degree of consanguinity (blood) or affinity (marriage).

****Business entity*** means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Chapter 171

Substantial Interest in Real Property

A person has a substantial interest in a real property if the person has a(n):

- *\$2,500 Ownership Interest*: Has a legal or equitable interest in real property worth \$2,500 or more
- *Close Relative w/ \$2,500 Ownership Interest*: close relative within the 1st degree of consanguinity (blood) or affinity (marriage).

Chapter 171

What does a local public official do if he/she has a conflict of interest?

1. *File an Affidavit* stating the nature and extent of the official's interest with the governmental body's record keeper.
2. *Abstain from discussion* or other proceeding regarding the item; and
3. *Abstain from voting* on the item.

Chapter 171

Consequences for failure to comply?

- **Civil:** Action taken may be voidable
- **Criminal:** Main situations in which public official may be prosecuted for his/her action or inaction:
 1. Failure to File an Affidavit
 2. Participating in Discussion Regarding an Item for when there is a conflict
 - Class A misdemeanor punishable by a fine not to exceed \$4000 and/or up to one year in jail.

Local Gov't Code Chapter 176 CONFLICTS DISCLOSURE

Who is subject to Chapter 176?

“Local government officers,” including:

- a member of the city council;
- a director, superintendent, administrator, president, or other person designated as the executive officer of the city; and
- an employee of the city if the city has extended the requirements of the statute to its employees.

Chapter 176

Two Things Trigger the Application of Chapter 176 to an Officer

1. A vendor enters into a contract with the city; and
2. The officer or the officer's close family member has an employment or business relationship with that vendor (receiving taxable income that is more than \$2500 in the preceding twelve months).

* *Close Family Member = Person within the 1st degree of consanguinity (blood) or affinity (marriage).*

Chapter 176

An officer or the officer's close family member accepts from a vendor in a twelve-month period one or more gifts that have an aggregate value of more than \$250

Chapter 176

What does an officer do if Chapter 176 applies?

Disclose the matter - file a statement with the city records administrator no later than 5 p.m. on the 7th business day after the date on which the officer becomes aware of facts that require a filing of the statement.

The form is available on the Texas Ethics Commission website at:
http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm

Chapter 176

Consequences for failure to comply?

A person who knowingly fails to file the statement commits a class C misdemeanor

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Chapters 171 and 176

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