




1

Alan Bojorquez

- Municipal Attorney
- Texas Tech University:
 - JD, MPA, BA
- Former Staff Lawyer, Tex Muni League
- Past-President, Tex City Atty Assn
- Board Member, Int'l Muni Law Assn
- *Outstanding Gov't Lawyer*, SBOT (2018)
- Author, *Tex Muni Law & Proc Manual* (7th Ed.)



BOJORQUEZ
LAW FIRM, PC
TexasMunicipalLawyers.com

2

Why are *you* here?

- Minimum 15 hours of CLE annually
- 3 of which must be “Ethics”



State Bar Rules, Article XII, Section 6B

3

3

Texas Disciplinary Rules of Professional Conduct

Rule 1.12 Organization as a Client

A lawyer employed or retained by an organization represents the **entity** and

accepts direction from an entity's duly authorized **constituents**, ...



4

4

Texas Disciplinary Rules of Professional Conduct

Rule 1.12 (Comment 9) Government Agency

Duty defined in this Rule applies to ***Governmental Organizations***



5

5

The End

(And they all lawyered happily ever after)

6

6

***Ooops, wait,
perhaps there's more to it***
(It ain't that simple)

7

7

What do you do when ...

- Mayor Pro Tem attends the City Secretary's consultation with City Secretary's *personal* attorney prior to the City Secretary's disciplinary hearing before the Council?
- Council Member sues the City?
- Mayor Pro Tem is married to a city department head whose position is scheduled to be abolished by the Council?



8

8

What do you do when ...

- Mayor is convinced the City Manager is like the *Chief of Staff* and the City Attorney is akin to *White House Counsel*?
- Council votes to file a City Ethics Complaint against a Council Member?



9

9

What do you do when ...

- Chief of Police secretly records Mayor trying to influence investigation of traffic accident (Mayor didn't witness)?
- Council Member is being prosecuted for plumbing work that he did as professional plumber *without* the required permits?
- Council Member is being prosecuted by city for *Public Intoxication* after being in a brawl at the city's annual *Goat Cookoff*?



10

10

Who's my client? *My client is a Thing!*

Rule 1.12(a):

- Lawyer representing an **Organization** represents the **Entity**
- Lawyer takes direction from entity's duly authorized **Constituents**
- **Comment 1.** Lawyer represents the Org as distinct from its directors, officers, employees
- Unlike individuals (who can speak and decide for themselves), an organization can speak / decide only through its agents or constituents (e.g., officers or employees).



11

11

Who's my client? *My client is People?*

Rule 1.12(a):

- When the Org's interest are **adverse** to those of **Constituent's**, lawyers should advise that Constituent, that the lawyer cannot represent them, and they can obtain *independent legal rep.*
- **Comment 9.** When the client is a governmental organization, a different balance may be appropriate between maintaining **confidentiality** and assuring that a wrongful official act is **prevented** or **rectified**, because public business is involved

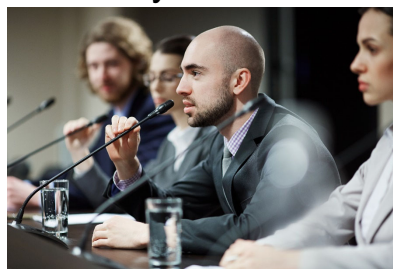


12

12

Adverse Interests w/i City Hall?

- Can a lawyer represent more than one Department within a city?
- Can a lawyer represent more than one city Board / Committee / Commission?
- What happens when staff's position is contrary to that of the citizen Advisory Board?
- What about Boards / Commissions that have statutory functions (*sovereign duties*, e.g. ZBA)?



13

13

Accusations of “Conflict” for City Atty!

Rule 1.01. Competent & Diligent Representation

Lawyer can't neglect a legal matter entrusted to them or fail to carry out completely the obligations the lawyer owes the client

Comment 6. Lawyer should act with **commitment and dedication** to the interests of the client and **zeal** in advocacy on the client's behalf

Rule 1.02. Scope & Objectives of Representation

Lawyer shall abide by **client's** decisions concerning objectives & methods of representation

Rule 1.06. Conflicts of Interests

Lawyer can't represent a person if it involves a substantially related matter and interests are materially and directly adverse to another client

14

14

Attorney-Client Relationship

Formation

- Expressly created by contract or implied from actions of parties.

Tanox v. Akin Gump

- Determination of whether there is a **meeting of the minds** must be based on objective standards of what the parties did and said, and not on their alleged subjective states of mind.

Terrell v. State

- Question of fact exists when the evidence does not conclusively establish the existence of an Attorney-Client relationship.

Sutton v. Estate of McCormick

15

15

Scope of the Privilege

- Defined by Tex.R.Evid. 503
- Intended to allow unrestrained communication and contact between attorney and client in all matters in which attorney's professional advice or services are sought
- without fear that these confidential communications will be disclosed by the attorney, voluntarily or involuntarily, in any legal proceeding
- Rule 503 protects confidential communications made for purpose of facilitating rendition of professional legal services to client

Huie v. DeShazo 16

16

Identity of the Client

“Pricklier Issue” of the role of a Government Lawyer: **ID of the client!**

State v. Martinez

- **Client:** Person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from that lawyer.
- **Representative of the Client:** (a) a person having authority to obtain professional legal services, or to act on advice rendered, on behalf of client, or (b) any other person who, for purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the scope of employment for client.

Tex.R.Evid. 503(a)(1)

Tex.R.Evid. 503(a)(2)(A)

17

17

Local Rules can Muddy the Waters

- City Attorney shall be legal advisor to and attorney for **all** officers of the City acting in their *official capacities* and shall represent the City and its departments in all legal proceedings.
- City Attorney shall serve as chief legal advisor to the Council, the City Manager, directors of City departments and other City officers and agencies. City Attorney shall represent the City in all legal proceedings and shall perform any other duties prescribed by this Charter, ordinance or law.

Bastrop Charter, Sec. 3.10

Buda Charter, Sec. 5.02

18

18

Clarifying the Lawyer's Role

Rule 1.12. Comment 4 warns us that there are times when entity's interest may be *adverse* to that of certain officers or employees

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 can't represent such constituent, and that such person may wish to obtain independent (personal) legal representation.



19

19

January 6th Hearings

*The client of the US DOJ is not the American people.
The one and only client of the DOJ is the
United States government.*

- **Richard Donoghue** (*paraphrased*)
 - former US Attorney for E. Dist. of NY
 - former Acting Deputy Attorney General



20

20

Beware of *Blurred Lines*

- City Employees often seek the City Attorney's guidance (advice)
- Sometimes as an **attorney** and sometimes as a **friend**
- Maybe they each vent their frustrations and criticisms of others
- Perhaps they agree that a situation, policy or practice is wrong
- Government Lawyer's job is difficult because it includes a duty to:
 - keep sight of their **Client**,
 - clarify their **Role**, & sometimes
 - suggest **Private Counsel**

State v. Martinez, 116 S.W.3d
385, 392–95 (Tex. App. 2003)



21

21

We Don't Represent *Individual Members*

But we do represent the *majority*?

- City Attorney does not represent individual Council Members
- Representation of Ethics Board may be materially and directly adverse to interests of specific Council Members against whom complaint was filed, those Council Members are not clients of the City Attorney
- However, if ethics complaint(s) are against a **majority** of Council Members, and Council *hires / fires* the City Attorney, there may be a conflict (*probably*)


Supreme Court of Texas
Professional Ethics Committee
Op. No. 567 (Feb. 2006)

22

22

Excluding Adverse Parties from Exec

- Persons with interests adverse to that of the governmental body are not permitted in Closed Session
- You can (*must?*) exclude Council Members who have sued the City, but can't if only threatened to sue?
- What if Executive Session is about that Council Member?



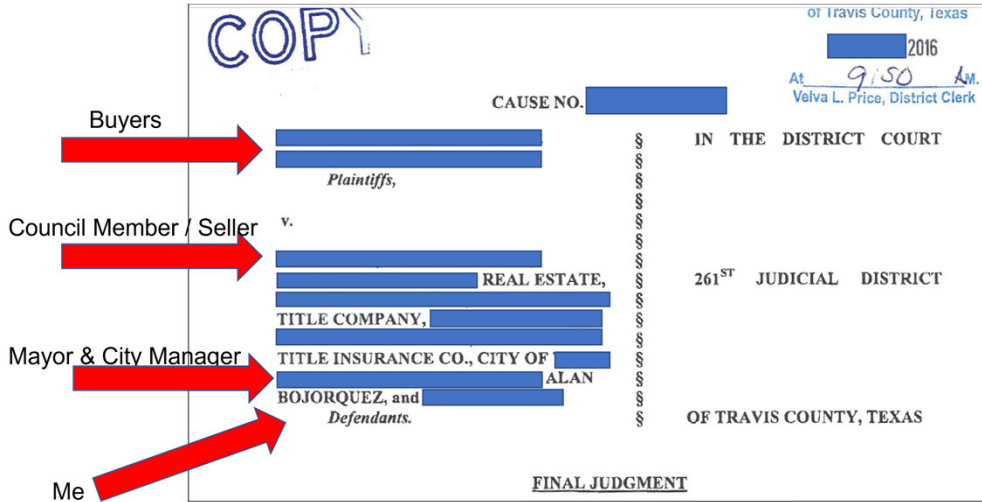
Op. Tex. Att’y Gen. Nos. JM-238 (1984) & GA-334 (2005)
Tex. Gov’t Code Ch. 551
Tex. Loc. Gov’t Code Ch. 171

23

23

Why am I here?

Because of this!



Buyers → Plaintiffs,

Council Member / Seller → v. REAL ESTATE, TITLE COMPANY, TITLE INSURANCE CO., CITY OF BOJORQUEZ, and ALAN Defendants.

Mayor & City Manager →

Me →

FINAL JUDGMENT

OF TRAVIS COUNTY, TEXAS

261ST JUDICIAL DISTRICT

IN THE DISTRICT COURT

CAUSE NO. [REDACTED]

2016

At 9:50 AM. Velva L. Price, District Clerk

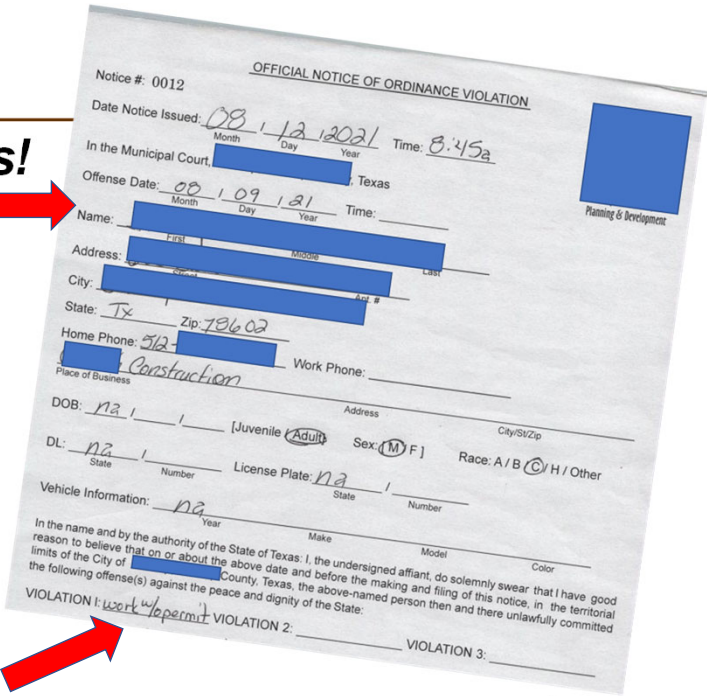

24

24

Why am I here?

And because of this!

Council Member

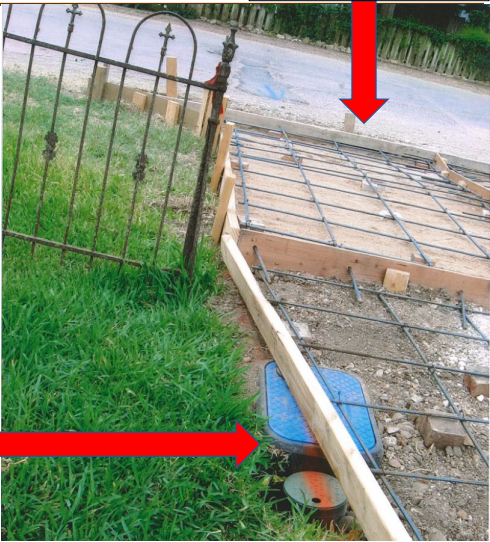


25

Why am I here?

Oh, and we can't forget this!

Council Member is a General Contractor in town and this is their client's project



That's going to be the driveway

Yes, that's a Water Meter!

26

Parting Words

- Make training a priority
- Be familiar with the law & rules
- Engage in an ongoing dialogue
- Network with honorable colleagues
- Know your place (your role)
- Remember you are part of a team
- Imagine your worst enemy learns
- Keep your eye on the ball
- Remember why you got into public service in the first place
- Don't be so eager to please that *you* become your client's problem



27

27

Do your part to Foster a Culture of Integrity



28

28