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## Coates' Canons Blog: One Attorney for Multiple Local Governments?

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How many local government clients are too many? If an attorney represents a county, is that attorney precluded from also representing a city in that county? What about representing multiple counties or multiple cities?

These questions are of great concern to attorneys, of course, because of their professional responsibility obligations. But they should also be important to the local governments who might retain attorneys with multiple governmental clients, because of the risk that such conflicts could present.

The ethical rules that govern attorney conduct in North Carolina don't categorically ban one attorney from representing multiple local governments. But they do make clear that in such situations an attorney should proceed with extreme caution and (most likely) the written consent of the affected clients. And before providing that consent, a government client should think carefully about whether the potential risks of a conflict outweigh the benefits of retaining that particular attorney.

Rule 1.7 of the North Carolina Rules of Professional Conduct (RPC) governs conflicts between an attorney's current clients. It states that a conflict exists if either (i) two clients will be directly adverse to each other or (ii) the representation of at least one client will be "materially limited" by the attorney's personal or professional obligations to other parties.

The first category of conflicts is usually easy to identify: the clients will be opposing parties in litigation or in a transaction. Assume an attorney represents Carolina County and is asked to represent its county seat and largest municipality, Blue Devil City. If the county and the city are on opposite sides of any on-going contracts, be it for tax collection or the provision of fire protection services or whatever, then the parties are "adverse" to each other for the purposes of Rule 1.7 and a conflict exists. This is true despite the fact that a signed contract suggests the two parties are in agreement on that issue—it's the *possibility* of a dispute arising over that contract that Rule 1.7 attempts to guard against.

The second category of conflicts is subjective and therefore more difficult to identify. When exactly is a representation "materially limited" by an attorney's other obligations?

Continuing with the example above, there are numerous situations in which Carolina County's interests could diverge from those of Blue Devil City. When that happens, the risk of one representation being "materially limited" is high. What if Blue Devil City proceeds with an involuntary annexation? What if the governments disagree over the distribution of sales tax? In such situations, the attorney may feel compelled to use confidential information from one client to benefit the other. Or the attorney may avoid recommending a particular course of action for one client because of the attorney's concern that it would harm the other client. A conflict would then arise under Rule 1.7 because the representation of one client could harm the representation of the other.

Consider an example involving two municipalities. Assume that Blue Devil City's attorney is asked to represent Wolfpack, a city in the neighboring county. The two cities are not directly adverse on any matters. Nevertheless, the attorney's obligations to one city still could materially limit the attorney's ability to represent the other. What if the two cities compete for a lucrative federal grant that will be awarded to only one city in the region? What if Blue Devil City begins to woo Wolfpack's largest employer to relocate? If so, then the duties of client confidentiality and zealous advocacy might pull the attorney in opposite directions, and a conflict would arise under RPC 1.7.

The fact that a conflict exists under RPC 1.7 does not mean the representations are prohibited. An attorney can proceed with conflicting representations if (i) the attorney "reasonably believes" that he/she will be able to provide "competent and diligent representation" to each client and (ii) the attorney obtains written, informed consent from each client. Before consenting to a conflict, clients must be provided a full explanation of the risks involved with the conflicting



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representations, including the risk that the attorney may be forced to terminate one or both representations. The only situation in which RPC 1.7 bars conflicting representations is when an attorney attempts to represent opposing parties in the same litigation.

How can the attorney (and the clients) ensure that each client will receive competent and diligent representation? One option is to agree that the attorney will be recused from any matter involving the other client. This makes sense if the likelihood of the clients being adverse on a material matter is very low. Perhaps the cities of Blue Devil City and Wolfpack have never been adverse to each other and likely will never be. If so, then the recusal option would probably not be difficult to implement and would probably not harm the representation of each client. In contrast, if Carolina County and Blue Devil City routinely contract with each other or spar over annexation issues, then recusing the attorney for each of those matters would be much more problematic and would be much more likely to harm the representation of each client.

Keep in mind that conflicts under RPC 1.7 are imputed to all attorneys associated in a firm through **RPC 1.10**. This means that if one attorney would have a conflict representing two clients, that conflict would "infect" all other attorneys in that same firm and require them to satisfy RPC 1.7's requirements. For example, assume that Attorney A of ABC Law Firm represents Blue Devil City. If Attorney B of ABC Law Firm agrees to represent Carolina County, a potential conflict would arise for both Attorney A and Attorney B.

What if Attorney A were a city councilperson in Blue Devil City rather than city attorney? In that case, Blue Devil City is not a client of Attorney A, but rather a personal interest. Under Rule 1.10, personal interests of one attorney are not imputed to other attorneys in the same firm. With disclosure and screening of Attorney A, the firm could proceed with the representation of Carolina County in litigation against Blue Devil City. See this 2002 ethics opinion from the N.C. State Bar.