

Municipal Attorney Ethics – Who is my Client when Representing an Entity

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CLE Outline: "Who Is My Client?" and Conflict Management for County Attorneys

Introduction

In New York county practice, the county attorney's client is generally the county as an institutional entity, and the county attorney's duties to advise/represent county actors can diverge when interests become inconsistent.

This outline integrates (a) the governing framework for the county attorney's advisory/representation role, (b) New York conflict-of-interest standards under the professional conduct rules, and (c) disqualification/screening principles reflected in New York decisions.

1. Program Overview

1. **Program title.** "Who Is My Client?" Navigating Conflicts When You Are Counsel to the County, the Board/Legislature, and County Officers.
2. **Audience.** New York county attorneys and assistant county attorneys handling advice, civil litigation, and intra-government disputes.
3. **Core problem statement.** County practice often requires advising multiple county constituents, but the county attorney must identify the client and manage conflicts when county actors' interests diverge.

2. Learning Objectives

1. **Client identification and decision authority.** Identify the client and who is authorized to direct the county's legal position when multiple county constituents seek advice or representation.

2. **Conflict spotting and triage.** Spot conflicts early using the concurrent-conflict (differing interests) framework and role-based statutory directives.
3. **Consent limits and separate counsel.** Know when consent is possible and when it is not, and how to transition to separate counsel pathways when interests are inconsistent.
4. **Appearance risk and screening.** Manage appearance-of-impropriety risk and screening where former-government or staffing issues arise.
5. **Diverging Interests.** Use a separate-counsel pathway when an officer's interests diverge from the county/board's interests.

4. Statutory and Role-Based Baseline: County Law § 501 (Who You Represent)

1. **County attorney's civil advisory and litigation role.** County Law § 501 provides that the county attorney is the legal advisor to the board of supervisors and every officer whose compensation is paid from county funds in matters involving an official act of a civil nature, and must prosecute and defend civil actions and proceedings brought by or against the county, the board, and covered officers for official acts (subject to exceptions).
2. **The statutory "divide" when interests are inconsistent.** County Law § 501 (2) further provides that whenever the interests of the board of supervisors or the county are inconsistent with the interests of an officer paid

from county funds, the county attorney shall represent the interests of the board of supervisors and the county, and the officer may employ an attorney at the officer's expense unless Public Officers Law § 18 applies.

3. **Authority to retain assisting counsel.** County Law § 501 contemplates that, within appropriations, the county attorney may employ counsel to assist in civil actions or proceedings involving the county or county officers in their official capacity.
4. **Practice translation (entity-first framing).** The baseline framing is that the county attorney's client is generally the county as an institutional entity, and statutory duties to advise/represent county actors can diverge when interests become inconsistent.

4. Concurrent Conflicts (Rule 1.7) and Loyalty Principles

1. Rule 1.7 concurrent conflict definition.

- a. Rule 1.7 prohibits representation where a reasonable lawyer would conclude there is a concurrent conflict, including where representation is directly adverse to another client or where there is a significant risk the lawyer's professional judgment will be materially limited by responsibilities to another client, a former client, a third person, or the lawyer's own interests. *N.Y. Rules of Pro. Conduct r. 1.7* (N.Y. State Bar Ass'n 2024).
- b. Rule 1.7(a)(1) prohibits representation where a reasonable lawyer would conclude the representation involves "differing interests." *Shelby v Blakes*, 129 A.D.3d 823,825 (2d Dep't 2015). The court applied

Rule 1.7(a)(1) to determine whether the first law firm, Borda Kennedy Alsen & Gold, LLP ("Borda"), violated the rule by representing both the driver (Harold Shelby) and the passenger (Ingram Earl) in a personal injury action arising from a motor vehicle accident. The court found that a conflict of interest arose when the defendant in the underlying action asserted a counterclaim against Shelby, alleging that his negligence caused the accident. This counterclaim created a direct pecuniary conflict between Shelby and Earl, as any finding of liability against Shelby could have adversely impacted Earl's recovery .

Bynum v Camp Bisco, LLC involved multiple defendants with different roles in an alleged negligence claim related to inadequate emergency medical services at a music festival. Because the defendants' interests could differ, the court found a risk that one lawyer representing all of them might face a conflict. To address this, the court upheld an order requiring defense counsel to obtain written statements from each defendant acknowledging and addressing any potential conflicts. The court emphasized that this requirement simply ensured compliance with Rule 1.7 and was not burdensome. It also noted that the defendants failed to properly preserve certain procedural objections. *Bynum v Camp Bisco, LLC*, 151 A.D.3d 1427(3d Dep't 2017).

In *Putnam v. Kibler*, which is distinguished from *Shelby v. Blakes*, the court considered whether a release signed by the plaintiff could be invalidated due to an alleged conflict of interest under New York Rules of Professional Conduct Rule 1.7 *Putnam v. Kibler*, 210 A.D.3d 1458,1463 (4th Dep't 2022).

The plaintiff claimed her attorney had a conflict because the attorney represented both her and another injured party from the same snowmobile accident. The court rejected this argument, finding no conflict because both clients' interests were aligned at the time—they were pursuing claims against the same negligent defendant. Thus, a reasonable attorney would not view the representation as involving differing interests. The court also found the plaintiff's allegations to be conclusory and unsupported by facts. *Putnam v. Kibler*, 210 A.D.3d 1458,1463 (4th Dep't 2022).

In *Death v. Salem*, the court addressed a conflict of interest arising from a County Attorney representing multiple defendants in a defamation case. The court found a potential conflict because the attorney treated the defendants inconsistently particularly by giving weaker denials and potentially distancing Salem from the county, which could expose her to personal liability and punitive damages. The court emphasized that even the appearance of impropriety or divided loyalty is enough to warrant disqualification, and that any doubts about a conflict should be resolved in favor of disqualification. Because the County Attorney's representation risked undermining Salem's defense, the court affirmed the attorney's disqualification to ensure fair and loyal representation. *Death v. Salem*, 111 A.D.2d 778 (2d Dep't 1985).

- c. In *Kelly*, the court emphasized that attorneys must demonstrate full disclosure and obtain consent from all affected parties to dispel any appearance of impropriety arising from conflicts of interest. *Kelly v. Greason*, 23 N.Y.2d 368,376 (1968). In, *Matter of S.A. v S.K.*, the court addressed concurrent representation and found that attorneys

representing multiple clients with adverse interests must avoid divided loyalties. The court emphasized that the attorney's duty of loyalty and confidentiality to each client is paramount, and any material adversity in interests warrants disqualification. *Matter of S.A. v. S.K.*, 41 Misc. 3d 1215(A), 977 (Fam. Ct. Bronx Cnty. 2013) (discussing impermissible representation of multiple clients by an attorney).

- d. **Government practice translation.** When asked to advise multiple county actors whose positions are diverging, treat the question as whether your representation of the county (or authorized county decision-maker) is materially compromised by duties to another current client within the county structure.

2. **Rule 1.7 waiver mechanics (four-part test).**

- a. Rule 1.7 (b) permits representation notwithstanding a concurrent conflict only (i) if the lawyer reasonably believes competent and diligent representation is possible, (ii) the representation is not prohibited by law, (iii) the representation does not involve asserting a claim by one client against another in the same litigation, and (iv) each affected client gives informed consent confirmed in writing. *Shelby v Blakes*, 129 A.D.3d 823, 825 (2d Dep't 2015). This was reiterated in *Bynum v Camp Bisco, LLC*, 151 A.D.3d 1427, 1429(3d Dep't 2017). In *Vinokur v Raghunandan*, the court found that the law firm failed to meet the conditions of Rule 1.7(b), particularly the requirement for informed consent confirmed in writing. The court also noted that, under certain circumstances, even full disclosure and consent may not cure a conflict if the lawyer cannot reasonably believe competent and

diligent representation is possible *Vinokur v. Raghunandan*, 27 Misc. 3d 1239(A) (Fam. Ct. Queens Cnty. 2010).

- b. **Practical emphasis for county attorneys.** County Law § 501(2) may effectively constrain "joint representation" when interests are inconsistent by directing the county attorney to represent the county/board, making Rule 1.7(b) consent analysis secondary to the statutory directive in those circumstances.
3. **Undivided loyalty / appearance of conflict.** New York authority emphasizes that representation of conflicting or adverse interests may constitute professional misconduct because a lawyer owes a fiduciary duty of undivided loyalty and generally may not place himself in a position where a conflicting interest may even inadvertently affect, or give the appearance of affecting, professional obligations. *Kelly v. Greason*, 23 N.Y.2d 368,375 (1968).
4. **"Moment conflict arises" withdrawal principle.** Dual representation becomes improper when a conflict or probability of conflict arises, at which point the lawyer must cleave to one and abandon the other with suitable opportunity to retain new counsel. *Field v. Moore*, 189 A.D. 709, 712 (1st Dep't. 1919). The conflict exists at the point when the attorney recognizes that one's clients may diverge from the other's. *Vinokur v. Raghunandan*, 27 Misc. 3d 1239(A) (Sup. Ct. Kings Cnty. 2010).

5. City and individual defendants whose interests conflicted such that dual representation was improper. *See Mercurio v. New York*, 758 F.2d 862, 864 (2d Cir. 1985); *Miller v. City of New York*, 21 Misc. 3d 886, 892 (Sup. Ct. N.Y. Cnty. 2008).
6. **County practice synthesis (statute + ethics).** Where County Law § 501(2) directs the county attorney to represent the county/board when interests are inconsistent, the statutory directive may effectively constrain any attempt to treat multiple county constituents as jointly represented clients for that dispute, making Rule 1.7(b) consent analysis secondary to the statutory allocation of representation.

5. Government Lawyer Conflicts and Screening (Appearance Concepts)

1. **Rule 1.11: government lawyer conflict overlay.** Rule 1.11 provides that a lawyer currently serving as a public officer or employee is subject to Rules 1.7 and 1.9, but is not subject to Rule 1.10, and restricts participation where the lawyer has a conflict or participated personally and substantially in the matter in private practice, absent applicable authorization.

2. "Personally and substantially" standard

- a. Rule 1.11 disqualifies a lawyer who moves from public sector to private employment from representing a litigant in a matter in which the lawyer participated personally and substantially as a government employee.

- b. In , *Matter of Coleman*, the court emphasized that a government lawyer is disqualified from representing a client in a matter in which they participated personally and substantially during government service. The rule aims to prevent conflicts while allowing reasonable mobility between public and private sectors. *Matter of Coleman*, 69 A.D.3d 846, 848 (2d. Dep't 2010).
- c. Similarly, *Greene* underscores the challenges of dual representation, particularly when public interests are implicated, and highlights the importance of avoiding even the appearance of impropriety. *Greene v. Greene*, 47 N.Y.2d 447,451 (1979).

3. Screening and appearance-of-impropriety emphasis

- a. New York disqualification jurisprudence emphasizes eliminating even the appearance of impropriety and the need for adequate screening measures, while cautioning against mechanical application of disqualification rules.
- b. In *Essex*, the court noted that when an attorney is disqualified due to acquiring confidential information, there is a presumption that the entire firm must also be disqualified. To rebut this presumption, the firm must demonstrate that the disqualified attorney's information is unlikely to be significant or material in the litigation and that effective screening measures have been implemented. *Matter of Essex Equity Holdings USA LLC v Lehman Bros. Inc.*, 29 Misc. 3d 371,377 (Sup. Ct. N.Y. County 2010).

- c. "[E]ven the appearance of impropriety must be eliminated" (citing *Kassis*) and discusses the need for adequate screening measures to eliminate involvement by a disqualified lawyer. *Kassis v. Teacher's Ins. & Annuity Ass'n*, 93 N.Y.2d 611, 618 (1999).
- d. *Kassis* also cautions that disqualification rules should not be mechanically applied and references the importance of context when disqualification is raised in litigation. *Kassis v. Teacher's Ins. & Annuity Ass'n*, 93 N.Y.2d 611, 617 (1999).

6. Separate Counsel and Indemnification Pathways

1. **County Law § 501(2) separate counsel pathway (baseline).** When interests are inconsistent between the county/board and a covered officer, County Law § 501(2) directs the county attorney to represent the county/board and contemplates that the officer may retain counsel at the officer's expense unless Public Officers Law § 18 applies. *Matter of Scuderi-Hunter v. County of Delaware*, 202 A.D.3d 1309, 1311–12 (3d Dep't 2022).
2. **Public Officers Law § 18: entitlement to private counsel upon conflict determination.** Public Officers Law § 18 (3)(b) provides that, subject to conditions, an employee is entitled to be represented by private counsel of the employee's choice in a civil action or proceeding whenever the public entity's chief legal officer (or other designated counsel) determines a conflict exists, or a court determines a conflict exists and the employee is entitled to counsel of choice, and that reasonable attorneys' fees and litigation expenses shall be paid by the public entity during the pendency of the matter with governing body approval. *Galligan v. Schenectady*, 116 A.D.2d 798 (3d Dep't 1986).

3. Public Officers Law § 18: adoption/coverage and payment mechanics

- a. Public Officers Law § 18 (2) applies to a public entity whose governing body has agreed by local law/resolution to confer the benefits and be liable for costs. *Zimmer v. Town of Brookhaven*, 247 A.D.2d 109, 112 (2d Dep't 1998).
- b. Public Officers Law § 18 (4)(d) further states that upon final judgment or settlement, the employee must serve a copy within thirty days and the amount shall be paid by the public entity if not inconsistent with the section.

4. Disqualification and court-ordered separate counsel. Under appropriate circumstances where the possibility of a conflict exists, a court may exercise discretion to order disqualification and appointment/reimbursement of separate counsel pursuant to Public Officers Law § 18(3)(b), and that an attorney may not place himself in a position where a potential conflicting interest may even inadvertently affect or create the appearance of affecting judgment.

7. Confidentiality and Privilege in the Entity Context

1. **Privilege baseline (CPLR 4503).** New York's attorney-client privilege statute provides that, unless waived, an attorney (or employee) shall not disclose confidential communications made between attorney and client in the course of professional employment, and such evidence shall not be disclosed in actions or governmental proceedings.

2. **Client-identification ambiguity in public sector practice** When a retainer fails to specify the client of the government lawyer, the lawyer may view the client as the municipality as a whole, the chief elected official, or the public at large, underscoring the need to clarify the attorney-client relationship at the outset. 5 *Warren’s Weed New York Real Property* § 49.06 (2026)

3. **Practical communication rule (entity-first).** Communicating the scope of representation to county branches/officials and emphasize that the county as a whole is the primary client. This is similar to Rule 1.13 which explains the attorney’s duties to the organization as a client.
 - a. Unless circumstances indicate otherwise, government lawyer representing official named solely in his or her “official capacity” would still, in effect, be representing client agency alone, and, unless circumstances indicated otherwise, government lawyer would deal with named official as constituent of agency rather than as someone personally represented by government lawyer; representation of entity in this context is analogous to representation of entity in private context. *N.Y. Rules of Pro. Conduct* r. 1.13 (2026).

8. Operational Decision Tree for Divided County Government (Policy vs. Legal Adversity vs. Litigation Posture)

1. **Step 1: Classify the disagreement.** If the issue is a policy disagreement without inconsistent legal interests, provide legal options and risk analysis to

the authorized county decision-maker consistent with the County Law § 501 advisory role.

2. **Step 2: Identify whether interests are "inconsistent" under County Law § 501(2).** If the dispute reflects inconsistent interests between the county/board and an officer, County Law § 501(2) directs representation in favor of the county/board and triggers the separate counsel discussion (including whether Public Officers Law § 18 is implicated).
3. **Step 3: Apply Rule 1.7 if asked to represent "differing interests."** If asked to represent multiple county constituents whose positions are directly adverse or materially limiting, analyze under Rule 1.7 and proceed only if the waiver requirements are satisfied (including informed consent confirmed in writing and the no claims against each other in the same litigation limitation).
4. **Step 4: Document and communicate.** Document the conflict analysis and any consent, and using County Law § 501(2) as the basis for explaining that, when interests are inconsistent, the office represents the county/board rather than the officer.

9. Guided Hypotheticals

1. **Hypothetical A: Board/Legislature versus elected official on policy implementation.** If the official seeks advice about an "official act of a civil nature," the county attorney may advise within the County Law § 501(1) role; if the official seeks advocacy against the county/board, analyze inconsistent

interests under County Law § 501(2) and transition to separate counsel pathways.

Scenario:

A county board passes a resolution directing the implementation of a new public health policy. The elected County Clerk, however, disagrees with the policy and seeks legal advice from the county attorney about whether to comply or challenge the board's directive. The Clerk requests advocacy against the board's position.

Teaching Point:

This scenario requires the county attorney to determine whether the request is for advice about an official act (permissible) or for advocacy against the county/board (potential conflict). If the latter, NY CLS County § 501(2) is triggered, and the Clerk should be referred to separate counsel

2. Hypothetical B: Two departments dispute authority/budget/policy.

Determine whether the dispute creates differing interests under Rule 1.7 or is a policy dispute addressable through neutral legal analysis to the authorized county decision-maker; if it becomes inconsistent interests between county/board and an officer, apply County Law § 501(2).

Scenario: The Department of Public Works and the Department of Health disagree over which department has authority over a new environmental initiative and how the budget should be allocated. Both department heads seek legal opinions from the county attorney, each advocating for their department's position.

Teaching Point: The county attorney must assess whether this is a policy dispute (addressable through neutral legal analysis) or if it has escalated to

inconsistent legal interests. If the latter, NY CLS County § 501(2) applies, and separate counsel may be necessary

3. **Hypothetical C: Officer requests advice that conflicts with county litigation posture.** If the officer's interests are inconsistent with the county/board, County Law § 501(2) directs representation of the county/board; if the request would require representing differing interests, Rule 1.7 prohibits absent satisfaction of waiver requirements, and the transition plan is referral to separate counsel consistent with County Law § 501(2) and (where applicable) Public Officers Law § 18

Scenario:

A county sheriff is named as a defendant in a civil rights lawsuit, along with the county. The sheriff requests the county attorney to take a legal position that would benefit the sheriff personally but would be adverse to the county's litigation strategy.

Teaching Point:

If the sheriff's interests are inconsistent with those of the county/board, NY CLS County § 501(2) directs the county attorney to represent the county/board. The sheriff should be referred to separate counsel, and Rule 1.7's waiver requirements must be considered if joint representation is contemplated

4. **Hypothetical D: Staffing and screening when a lawyer has prior government involvement.** Apply Rule 1.11's restrictions and the "personally and substantially" standard, and implement screening consistent with the outline's appearance-of-impropriety and screening adequacy discussion.

Scenario:

A newly hired assistant county attorney previously worked for a state agency and was personally and substantially involved in a matter now pending before the county. The county attorney's office is asked to represent the county in this matter.

Teaching Point:

Rule 1.11's restrictions apply. The assistant must be screened from participation, and the office must ensure that no confidential information is shared, addressing both the substance and the appearance of impropriety

5. Hypothetical E: Divided county government-County Executive versus supermajority Legislature. The ethical considerations when serving as counsel to both a Republican County Executive and a Democrat supermajority Legislature in a divided county government, emphasizing that the county attorney must identify the county as the primary client and navigate conflicts when the executive and legislative branches disagree on policy or legal strategy.

Scenario: A Republican County Executive and a Democrat-controlled supermajority Legislature are at odds over the county's budget priorities. Both seek legal advice and advocacy from the county attorney's office regarding the legality of proposed budget amendments.

Teaching Point: The county attorney must identify the county as the primary client and navigate the conflict between executive and legislative branches. If the dispute involves inconsistent legal interests, the attorney must consider conflict management strategies and possibly refer one party to separate counsel

6. **Issue-spotting prompts.** Is the request (i) advice to the county as an entity, (ii) advice to an officer about an official act, or (iii) advocacy by one branch against the other.

7. **Conflict handling.** If the representation would be directly adverse or materially limiting, apply Rule 1.7 and do not proceed absent satisfaction of waiver requirements; if the dispute reflects inconsistent interests between the county/board and an officer, apply County Law § 501(2) and consider separate counsel pathways.

8. **Best-practice interventions.** Proactively identify conflicts, communicate scope, and consider independent counsel when conflicts are irreconcilable, consistent with the basic topic materials' recommendations.

10. Best Practices Toolkit (Enhanced, Actionable)

1. **Intake and conflict-check enhancements.**

2. **Matter-opening checklist.** Identify whether the matter involves an official act of a civil nature and whether any inconsistent interests exist under County Law § 501(2).

3. **Conflict flags.** Treat requests that pit an officer against the county/board as presumptively implicating County Law § 501(2) and potentially Rule 1.7.

4. **Standardized communications and documentation.**

5. **Entity-first advisory language.** When inconsistent interests arise, communicate that the office represents the county/board under County Law § 501(2).
6. **Written consent where applicable.** If proceeding with any waivable concurrent conflict, obtain informed consent confirmed in writing as required by Rule 1.7.
7. **Separate counsel workflow (Public Officers Law § 18);** Initial request for defense, determination of conflict of interest, court determination of conflict, approval of private counsel fees, dispute resolution, conditions for defense and indemnification, limitations (punitive damages, intentional wrongdoing, acts outside the scope of employment).
8. **Triggering event.** When the chief legal officer determines a conflict exists (or a court so determines), the employee is entitled to private counsel of choice subject to statutory conditions, and the public entity pays reasonable fees/expenses during the pendency with governing body approval.
9. **Grouping counsel condition.** The chief legal officer may require, as a condition to payment, that appropriate groups of employees be represented by the same counsel.
10. **Appearance-of-impropriety risk management.** “[E]ven the appearance of impropriety must be eliminated”. *Kassis v. Teacher's Ins. & Annuity Ass'n*, 93 N.Y.2d 611, 618 (1999).

11. **Avoid being seen as adverse to the municipality.** Ethics Committee Opinion 544 discusses that a governmental attorney should not allow himself to be seen as representing an interest adverse to the municipality he represents, including in contexts that create appearance concerns. *Lanza v. Rath*, 150 Misc. 2d 85, 88 (Sup. Ct. Onondaga Cnty. 1991).
12. **Screening and appearance.** Where screening is used (most commonly in Rule 1.11 contexts), implement timely and effective screening and evaluate whether circumstances create an appearance of impropriety consistent with the outline's disqualification/screening discussion.

11. Closing Takeaways and Red Flags

1. **Red-flag checklist.** help me against the board/county represent me personally and we disagree on policy-tell me how to win internally should trigger immediate County Law § 501(2) and Rule 1.7 analysis and, where appropriate, a separate counsel pathway.
2. **Three takeaways.** (i) Identify whether the matter is an official act and whether inconsistent interests exist under County Law § 501; (ii) apply Rule 1.7 to determine whether you are being asked to represent differing interests and whether waiver is available and properly documented; (iii) and where screening/appearance issues arise (especially in Rule 1.11 contexts), evaluate appearance-of-impropriety concerns and implement adequate screening measures.