



ETHICS ISSUES FOR COUNTY ATTORNEYS
TCAA SPRING CONFERENCE APRIL 27, 2018

Presented by: *Laura Chastain, Ethics Counsel for the Board of Professional Responsibility*





COUNTY ATTORNEYS ARE BOUND BY MANY SETS OF RULES INCLUDING THE ATTORNEY GENERAL'S OPINIONS; THE COUNTY CHARTER; THE ETHICAL STANDARDS ADOPTED BY THEIR COUNTY; AND THE TENNESSEE RULES OF PROFESSIONAL CONDUCT.



THE TENNESSEE SUPREME COURT RECOGNIZES THAT BECAUSE OF THE VARIOUS LEGAL PROVISIONS, INCLUDING CONSTITUTIONAL, STATUTORY, AND COMMON LAW, THE RESPONSIBILITIES OF GOVERNMENT LAWYERS MAY DIFFER FROM THOSE OF LAWYERS IN PRIVATE CLIENT-LAWYER RELATIONSHIPS.

SUPREME COURT RULE 8 SECTION [19] UNDER SCOPE



FOR EXAMPLE:

- CERTAIN GOVERNMENT LAWYERS MAY BE AUTHORIZED TO REPRESENT SEVERAL GOVERNMENT AGENCIES, OFFICERS, OR EMPLOYEES IN LEGAL CONTROVERSIES IN CIRCUMSTANCES WHERE A PRIVATE LAWYER COULD NOT REPRESENT MULTIPLE PRIVATE CLIENTS. GOVERNMENT LAWYERS IN TENNESSEE ARE ALSO SUBJECT TO THE OPEN MEETINGS ACT AS INTERPRETED BY TENNESSEE COURTS.

THE RULES OF PROFESSIONAL CONDUCT DO NOT ABROGATE THE POWERS AND RESPONSIBILITIES OF THE GOVERNMENT LAWYERS AS SET FORTH UNDER FEDERAL LAW OR UNDER THE CONSTITUTION, STATUTES OR COMMON LAW OF TENNESSEE.



THE MAIN FOCUS OF THIS PRESENTATION WILL BE THE TENNESSEE RULES OF PROFESSIONAL CONDUCT AND HOW THEY APPLY TO ISSUES FACING COUNTY ATTORNEYS



AS ETHICS COUNSEL, MY JOB IS TO ANSWER THE ETHICS HOTLINE AND GIVE GUIDANCE TO ATTORNEYS WHO ARE FACING AN ETHICAL DILEMMA.



WHEN IN DOUBT ABOUT AN ETHICAL DILEMMA CALL THE ETHICS HOTLINE

- You can get advice when you don't know what to do with regard to the ethics of a situation in your practice.



615-361-7500 locally

1-800-486-5714 from anywhere in U.S.A.



HOW TO GET ASSISTANCE WITH AN ETHICAL DILEMMA?

- 1. PICK UP THE PHONE AND CALL 615-361-7500 EXTENSION 212;
OR
- 2. USE THE BOARD'S ONLINE INFORMAL ETHICS INQUIRY PROGRAM; OR
- 3. SEND AN EMAIL WITH THE FACTS AND YOUR QUESTION(S)
TO lchastain@tbpr.org

WHEN GIVING ETHICS OPINIONS, ETHICS COUNSEL IS PROHIBITED FROM GIVING ETHICS OPINIONS BY BOARD POLICY IN THE FOLLOWING SITUATIONS:

- 1. MATTERS PENDING BEFORE A COURT OR ADMINISTRATIVE BODY;
- 2. ANOTHER LAWYER'S CONDUCT;
- 3. YOUR OWN PAST CONDUCT.



WHEN CAN ETHICS COUNSEL GIVE AN INFORMAL ETHICS OPINION?

- WHEN YOU ARE SEEKING GUIDANCE REGARDING YOUR OWN PROSPECTIVE CONDUCT.
- WHEN YOU ARE SEEKING WHAT YOU SHOULD DO UNDER THE CIRCUMSTANCES CONSIDERING THE RULES OF PROFESSIONAL CONDUCT.
- WHEN YOU ARE SEEKING THE RULES OF PROFESSIONAL CONDUCT THAT APPLY TO YOUR SITUATION.

IS MY ETHICS INQUIRY CONFIDENTIAL?

- YES, EVERY ETHICS CALL IS CONFIDENTIAL. THERE IS A CONFIDENTIAL RECORD MADE OF EACH CALL THAT IS NOT SUBJECT TO A PUBLIC RECORDS REQUEST.
- THE LAWYER MAKING THE CALL HAS THE RIGHT TO WAIVE THE CONFIDENTIALITY IN THE EVENT THAT THE LAWYER WANTS TO USE THE FACT THAT HE/SHE CALLED THE BPR FOR GUIDANCE.



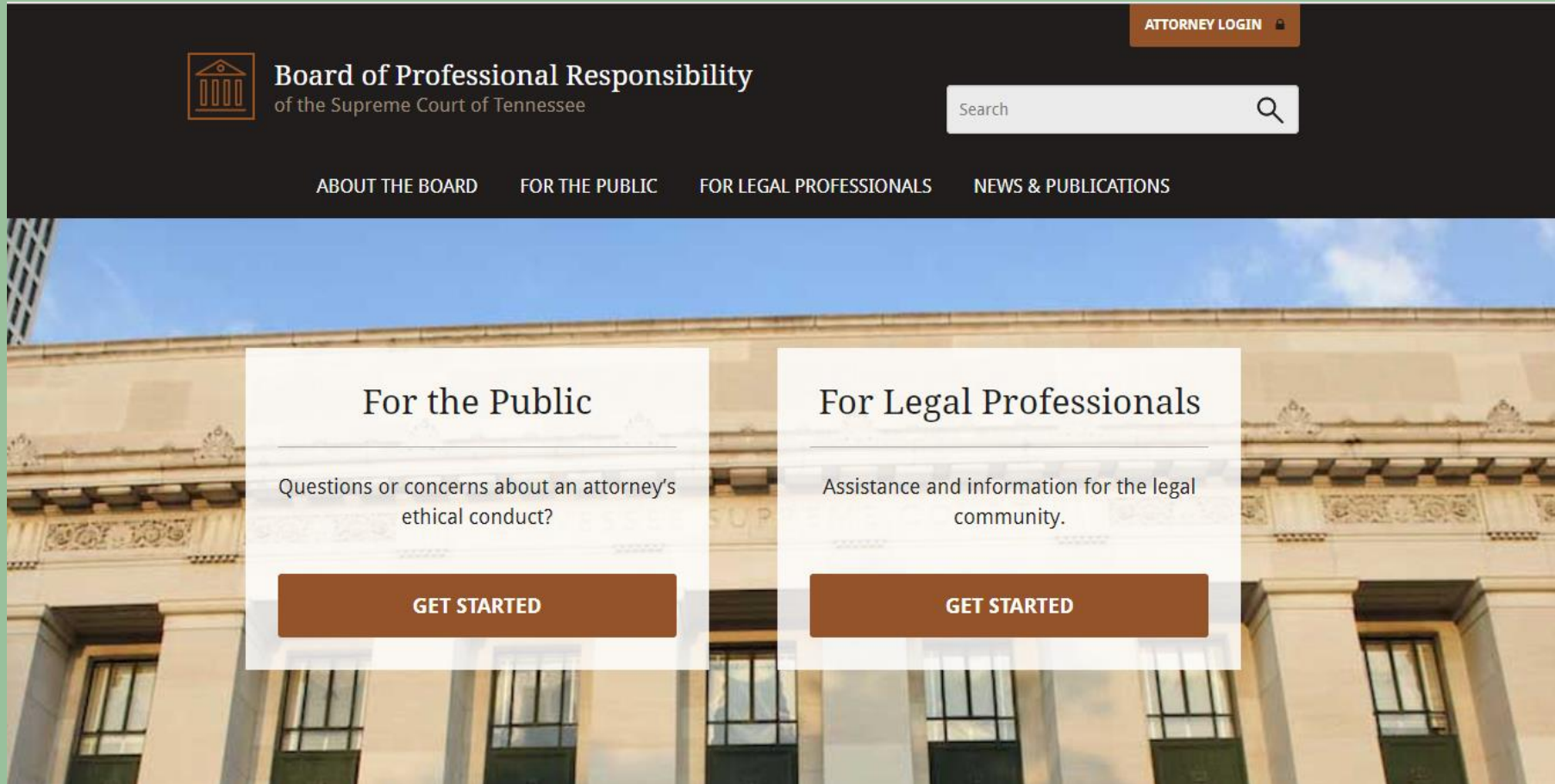
TENNESSEE SUPREME COURT RULE 9 SECTION 5.4(C)

- An advisory ethics opinion may be issued by disciplinary counsel when there is readily available precedent. The advisory opinion shall not be binding on the board and shall offer no security to the person requesting it. All requests for advisory opinions, oral and written, and any response by disciplinary counsel shall be confidential and **shall not be public records or open for public inspection** except as subject to waiver by the requesting attorney or as otherwise provided in section 32.

FORMAL ETHICS OPINIONS

- SUPREME COURT RULE 9, SECTION 5 GOVERNS THE ISSUANCE OF FORMAL ETHICS OPINIONS BY THE BOARD OF PROFESSIONAL RESPONSIBILITY.
- THESE OPINIONS TAKE AT LEAST 3 MONTHS TO OBTAIN DUE TO THE FACT THAT THE BOARD MEETS QUARTERLY.
- THESE OPINIONS MUST BE REQUESTED IN WRITING AND COMPLY WITH SUPREME COURT RULE 9, SECTION 5.4(b).
- GENERALLY, THE BOARD WILL ISSUE OPINIONS ON SUBJECTS THAT WILL HAVE MEANING AND GIVE GUIDANCE TO A BROAD SPECTRUM OF LAWYERS RATHER THAN A SPECIFIC NARROW QUESTION AFFECTING VERY FEW LAWYERS.

WHERE CAN I FIND THE FORMAL ETHICS OPINIONS ?



The image shows a screenshot of the Board of Professional Responsibility website. The header is dark with the logo on the left, which includes a stylized building icon and the text "Board of Professional Responsibility of the Supreme Court of Tennessee". On the right of the header, there is an "ATTORNEY LOGIN" button with a lock icon and a search bar with the text "Search" and a magnifying glass icon. Below the header is a navigation menu with four items: "ABOUT THE BOARD", "FOR THE PUBLIC", "FOR LEGAL PROFESSIONALS", and "NEWS & PUBLICATIONS". The main content area features a background image of a classical building facade. Two white boxes are overlaid on the image. The left box is titled "For the Public" and contains the text "Questions or concerns about an attorney's ethical conduct?" and a brown "GET STARTED" button. The right box is titled "For Legal Professionals" and contains the text "Assistance and information for the legal community." and a brown "GET STARTED" button.

Board of Professional Responsibility
of the Supreme Court of Tennessee

ATTORNEY LOGIN

Search

ABOUT THE BOARD FOR THE PUBLIC FOR LEGAL PROFESSIONALS NEWS & PUBLICATIONS

For the Public

Questions or concerns about an attorney's ethical conduct?

GET STARTED

For Legal Professionals

Assistance and information for the legal community.

GET STARTED




Attorney License Information

- Information for New Attorneys
- Active, Inactive & Exempt Status
- Reinstatement of Law License
- Letters of Good Standing



Rules

The Board is governed by the following rules.

- Board Policies and Rules 
- Tennessee Supreme Court Rule 8 - Rules of Professional conduct
- Tennessee Supreme Court Rule 9 - Disciplinary Enforcement
- Tennessee Supreme Court Rule 43 - Interest on Lawyers' Trust Accounts
- Tennessee Supreme Court Rule 44 - Regulation of Lawyer Intermediary Organizations



Ethics Opinions

Search below by keyword, phrase or year for Formal Ethics Opinions issued from 1980 to the present.

Keyword(s) or Opinion Number

- Formal Ethics Opinions
- Informal Ethics Inquiries
- Ethics Frequently Asked Questions




State Agencies

- Tennessee Lawyers Assistance Program (TLAP)
- Tennessee Commission on Continuing Legal Education
- Tennessee Board of Law Examiners
- Tennessee Bar Foundation



Trust Accounting

- Approved Banks and Credit Unions 
- IOLTA (Interest On Lawyers Trust Accounts)
- Attorney Trust Account Overdraft Notification Agreement





Pro Hac Vice Attorneys

- Pro Hac Vice Registration
- Pro Hac Vice Search
- Pro Hac Vice Frequently Asked Questions
- Supreme Court Rule 19 - Appearance Pro Hac Vice in Proceedings Before Tennessee Agencies and Courts by Lawyers Not Licensed to Practice Law in Tennessee



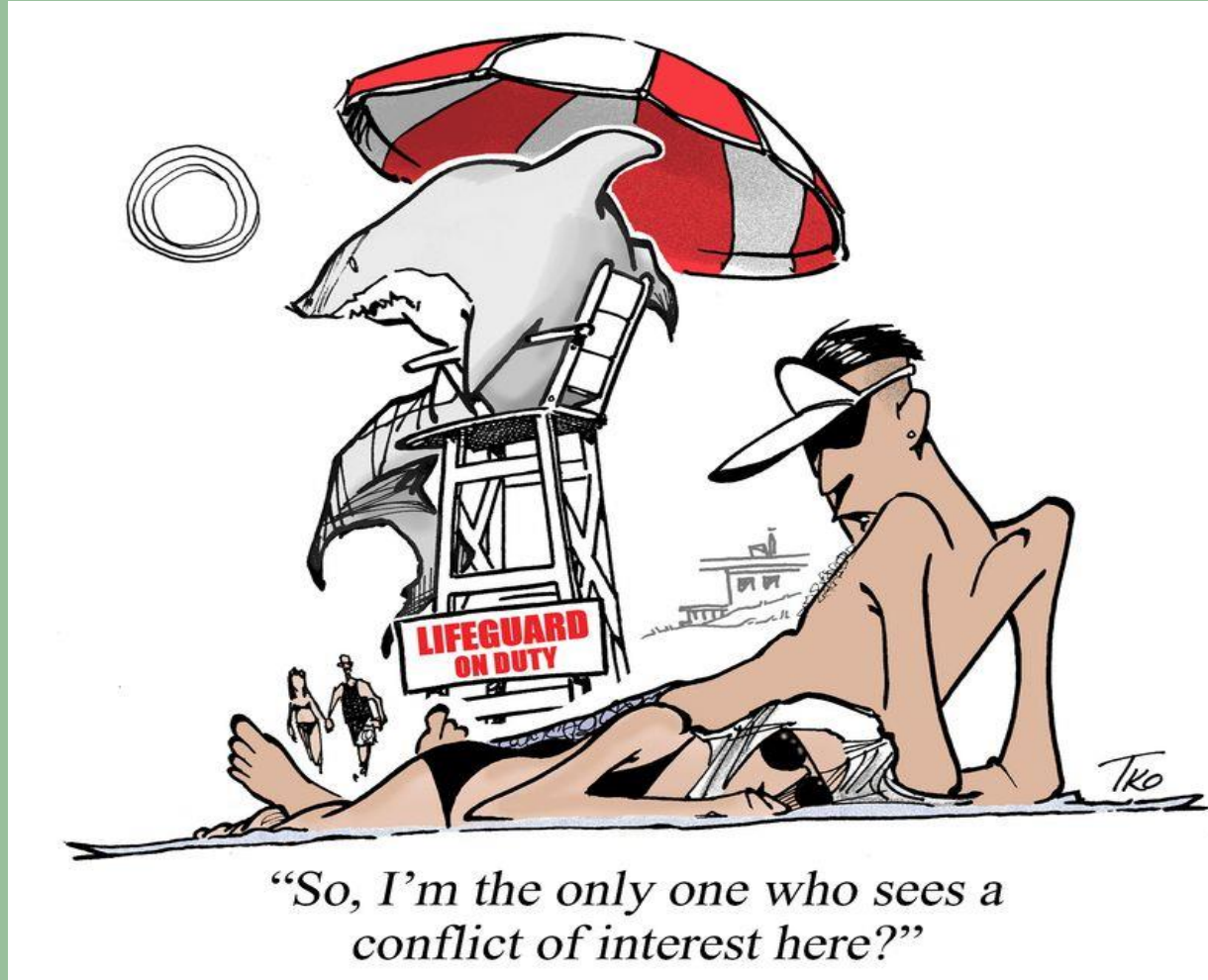
Resources

- TLAP (Tennessee Lawyers Assistance Program)
- Frequently Asked Questions regarding Suspended Attorneys
- Resources for When an Attorney is Unable to Practice Law 
- File your Professional Privilege Tax
- The Tennessee Attorney's Trust Account Handbook 
- Links of Interest

WHAT ETHICAL ISSUE DO YOU THINK THAT COUNTY ATTORNEYS MOST OFTEN CALL THE BOARD FOR AN ETHICS OPINION?



CONFLICTS OF INTEREST



“So, I’m the only one who sees a conflict of interest here?”

LAST YEAR THERE WERE 716 CONFLICTS OF INTEREST QUESTIONS ANSWERED.



CONFLICTS OF INTEREST IS AN
AREA FULL OF LANDMINES FOR
COUNTY ATTORNEYS.



COUNTY ATTORNEYS NEED CLARITY AS TO WHO IS THEIR CLIENT?

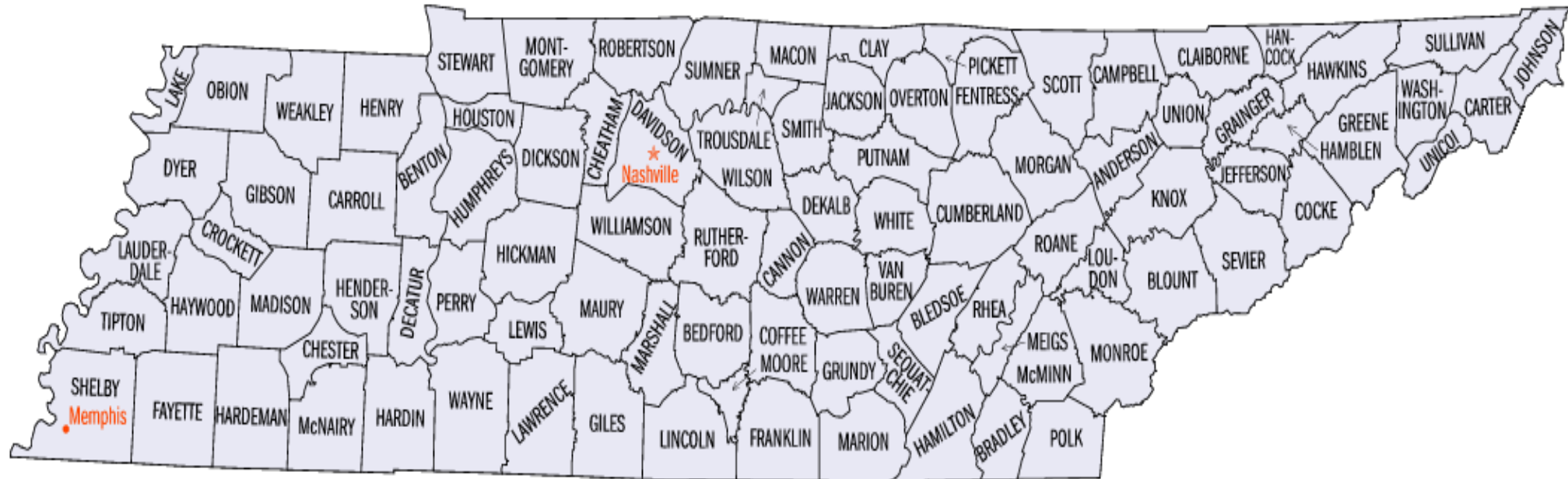
- THE KEY TO COMPLYING WITH ETHICS RULES IS KNOWING WHO IS ACTUALLY YOUR CLIENT.
- MOST RULES OF PROFESSIONAL CONDUCT WERE DRAFTED WITH PRIVATE LAWYERS IN MIND.



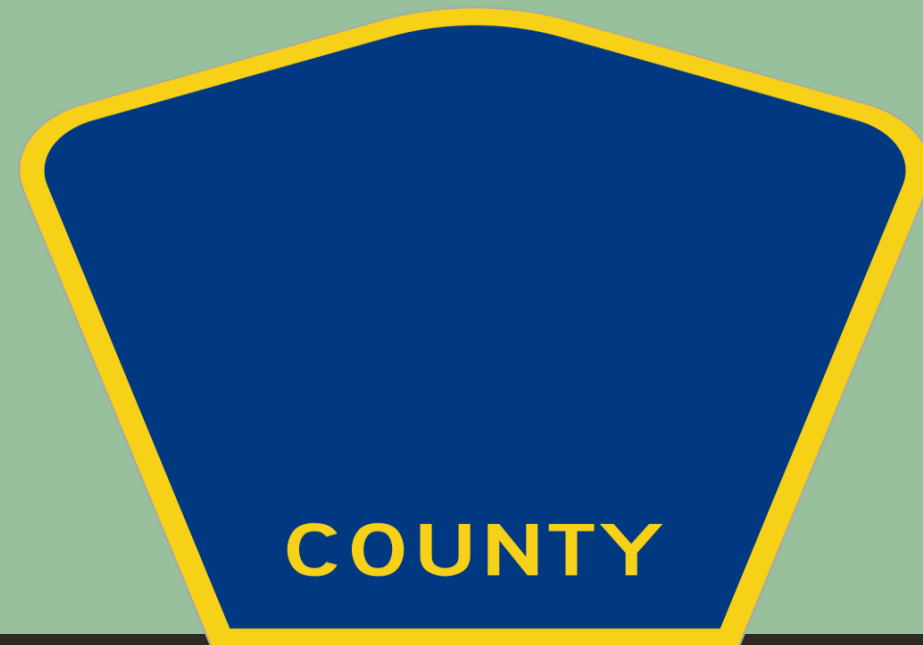
THE RULE OF PROFESSIONAL CONDUCT THAT GIVES GUIDANCE IN THIS REGARD IS RPC 1.13 - ORGANIZATIONAL CLIENTS

- **RPC 1.13(a)**
- **“ A LAWYER EMPLOYED OR RETAINED BY AN ORGANIZATION REPRESENTS THE ORGANIZATION ACTING THROUGH ITS DULY AUTHORIZED CONSTITUENTS.”**

THE COUNTY IS THE CLIENT



IS IT A CONFLICT OF INTEREST FOR A PART TIME COUNTY ATTORNEY TO REPRESENT PRIVATE CLIENTS BEFORE ADMINISTRATIVE AGENCIES OF THE COUNTY SINCE IT MAY CONFLICT WITH HIS OR HER DUTY TO PROTECT THE INTERESTS OF THE COUNTY ?



ANSWER: IT DEPENDS

- IN ALL MATTERS INVOLVING GOVERNMENTAL INTERESTS AND DIFFERING INTERESTS THE QUESTION OF A CONFLICT OF INTEREST IS A FACTUAL ONE DEPENDING UPON THE USE OF THE ATTORNEYS INFLUENCE TO AFFECT THE OUTCOME OR DECISION IN THE PARTICULAR MATTER UNDER CONSIDERATION; OR, WHETHER THE ATTORNEY'S PROFESSIONAL JUDGMENT ON BEHALF OF A CLIENT WAS OR WILL BE IN FACT AFFECTED BY HIS INTEREST AS A PUBLIC OFFICIAL OR GOVERNMENT ATTORNEY. THERE IS NO PRESUMPTION OF IMPROPRIETY. *Formal Ethics Opinion 86-F-107(a).*

THEREFORE, EACH INCIDENT SHOULD BE EXAMINED AND DETERMINED ON A CASE BY CASE BASIS. *State of Tennessee vs. Jesse Jones, In Re: Larry S. Banks, Attorney, 726 S.W. 2d 515 (Tenn. 1987)*



**FORMAL ETHICS OPINION 2002-F-146
ADDRESSES CONCERNS OF CONFLICTS BY
PART TIME ASSISTANT DISTRICT ATTORNEYS.**

- **CITY ATTORNEYS IN THE COUNTY'S MUNICIPAL COURTS ARE ALSO SWORN IN AS PART-TIME ASSISTANT DISTRICT ATTORNEYS WHO PROSECUTE ALL STATE CRIMINAL ACTIONS SET IN ANY MUNICIPAL COURT WITHIN THE COUNTY WHERE THE MUNICIPALITY PROVIDES SUFFICIENT PERSONNEL TO THE DISTRICT ATTORNEY FOR THAT PURPOSE, PURSUANT TO T.C.A. SECTION 8-7-103(1).**

The Ethics Opinion found that these part time assistant district attorneys who prosecute state criminal matters in municipal courts and also represent criminal defendants in county general sessions and criminal courts were engaging in ethically inappropriate representation of the criminal defendants.



FORMAL ETHICS OPINION 2002-F-146 SETS OUT THE CONFLICT:

- “PROSECUTORS HAVE TAKEN AN OATH OF OFFICE TO UPHOLD AND APPLY STATE LAW IN PROSECUTIONS AND TO ASSIST MUNICIPAL, COUNTY AND STATE LAW ENFORCEMENT OFFICERS IN PROSECUTING ALLEGED CRIME. ZEALOUS REPRESENTATION OF CRIMINAL DEFENDANTS VERY OFTEN WILL REQUIRE VIGOROUS CROSS-EXAMINATION OF THE TESTIMONY OF SUCH LAW ENFORCEMENT PERSONNEL, AND IN MANY INSTANCES WILL REQUIRE CHALLENGING THE VERY LAWS THE PROSECUTOR IS CHARGED TO ENFORCE.”

- “EVEN IF CROSS-EXAMINATION OF SUCH PERSONNEL WOULD NOT INVOLVE THE DISCLOSURE OF CONFIDENCES AND SECRETS OF THE STATE OR MUNICIPALITY, THE DESIRE TO MAINTAIN A HARMONIOUS WORKING RELATIONSHIP WITH THESE LAW ENFORCEMENT OFFICERS WOULD ADVERSELY AFFECT THE INQUIRING ATTORNEY’S ZEAL IN CONDUCTING SUCH CROSS-EXAMINATION. ON THE OTHER HAND, IF A PROSECUTION RESULTS IN ACQUITTAL OR IF THE DEFENDANT RECEIVES A BENEFICIAL DISPOSITION OF THE CHARGES, IT IS LIKELY AN APPEARANCE WOULD BE CREATED THAT THE DISPOSITION WAS THE RESULT OF THE ASSISTANT DISTRICT ATTORNEY’S RELATIONSHIP WITH LAW ENFORCEMENT PERSONNEL.”

THE COUNTY ATTORNEY SHOULD CLARIFY HIS/HER ROLE

- THERE ARE TIMES WHEN THE ORGANIZATION'S INTEREST MAY BE OR BECOME ADVERSE TO 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 MUST 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 THE CONSTITUENT INDIVIDUAL, AND THAT DISCUSSION BETWEEN THE LAWYER FOR THE ORGANIZATION AND THE INDIVIDUAL **MAY NOT BE PRIVILEGED.**

- *COMMENT [9] RULE 1.13 TENNESSEE RULES OF PROFESSIONAL CONDUCT*

RPC 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES



RPC 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

EXAMPLE : AN ATTORNEY HAD REPRESENTED PRIVATE CLIENTS IN A DISPUTE WITH THEIR CITY OVER THE MAINTENANCE OF A ROAD. YEARS LATER ATTORNEY HAS BECOME THE COUNTY ATTORNEY AND IS ASKED TO ISSUE A WRITTEN OPINION TO THE COUNTY BOARD CONCERNING THE HANDLING OF THE STILL ONGOING DISPUTE CONCERNING THE SAME ROADWAY AND THE IDENTICAL ISSUE.

IS THERE ANY WAY THE COUNTY
ATTORNEY CAN ISSUE THE OPINION?



RPC 1.11 (d)

- (a) Except as the law may otherwise expressly permit, a lawyer serving as a public officer or employee:
 - 1. is subject to RPC's 1.7 and 1.9; and
 - 2. shall not:
 - (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing, or under applicable law is, or by lawful delegation may be authorized to act in the lawyer's stead in the matter;

NATIONALLY, THERE HAVE BEEN CONFLICTS CASES WHERE COUNTY ATTORNEYS WERE FOUND TO HAVE VIOLATED RPC 1.11(d)

- AN ATTORNEY REPRESENTED AN INDIVIDUAL CONCERNING THE POSSIBILITY OF REDUCING THE PERSON'S CHILD-SUPPORT OBLIGATION, ALTHOUGH THE ATTORNEY WITHDREW BEFORE A PETITION WAS FILED. THREE YEARS LATER, NOW AS COUNTY ATTORNEY, THE ATTORNEY TENDERED A STIPULATION TO THE INDIVIDUAL IN AN EFFORT TO SETTLE THE CHILD-SUPPORT MATTER ON BEHALF OF THE COUNTY. *THIS VIOLATED RPC 1.11(d).*

- AN ATTORNEY REPRESENTED A WOMAN IN A MARITAL DISSOLUTION IN WHICH THE JUDGMENT AND DECREE STATED THAT THE HUSBAND WOULD BE RESPONSIBLE FOR ALL JOINT DEBTS INCURRED PRIOR TO THE DISSOLUTION. TWO YEARS LATER, THE COUNTY SOCIAL SERVICES ATTEMPTED TO COLLECT ON A CLAIM AGAINST THE INDIVIDUAL, AND CONSULTED WITH THE RESPONDENT ATTORNEY, NOW AT THE COUNTY ATTORNEY'S OFFICE, WHO APPROVED THE ACTION. THE ATTORNEY CLAIMED THAT SHE WAS NOT AWARE THAT THE CASE INVOLVED HER FORMER CLIENT, BUT ADMITTED SHE HAD MADE NO ATTEMPT TO CHECK FOR POSSIBLE CONFLICTS. *VIOLATION OF RPC1.11(d)*

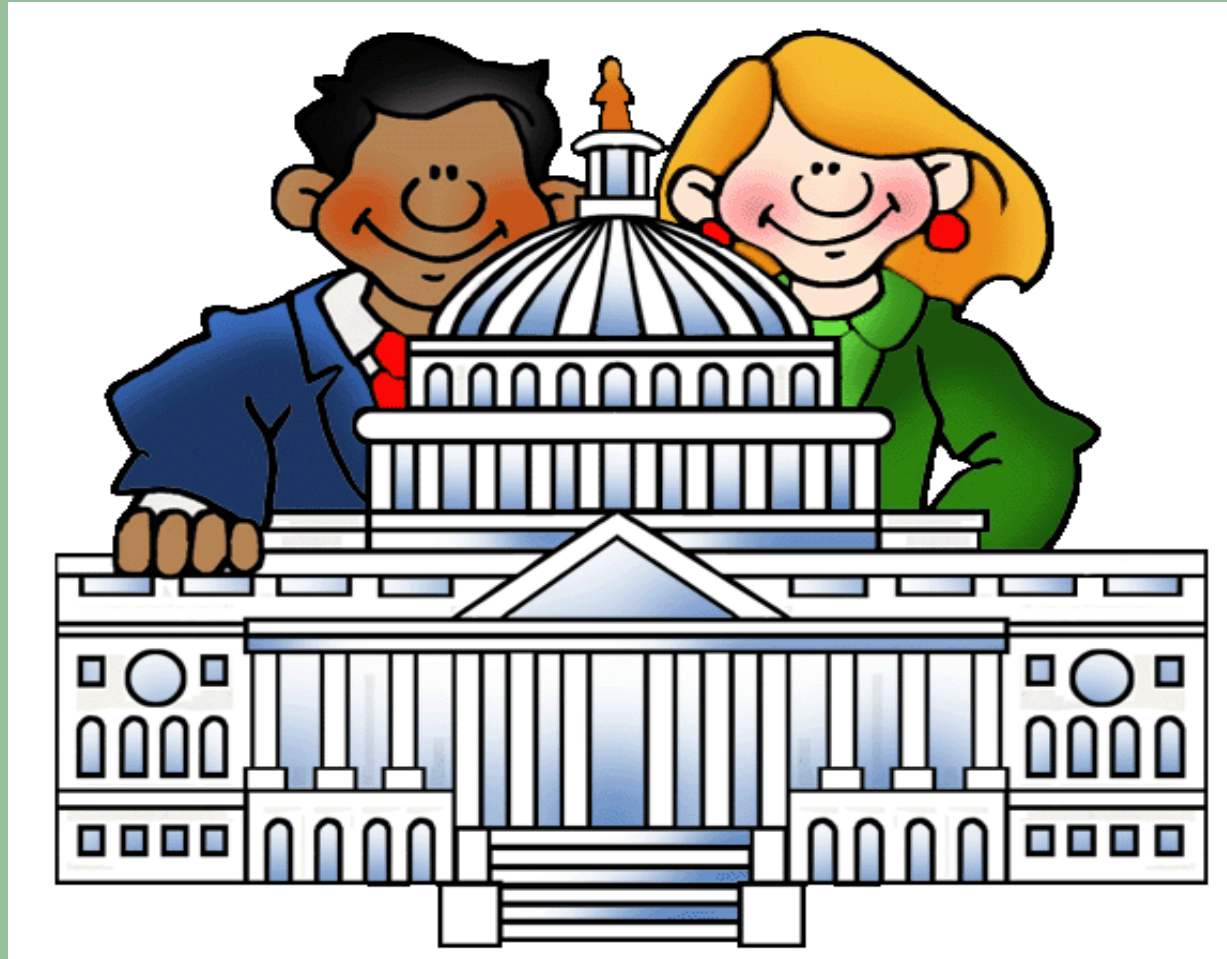
IMPORTANT RULES OF PROFESSIONAL CONDUCT FOR GOVERNMENT ATTORNEYS

- RPC 1.13 ORGANIZATIONAL CLIENTS
- RPC 1.11 SPECIAL CONFLICTS OF INTERESTS FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES
- RPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS
- RPC 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES
- RPC 1.9 DUTIES TO FORMER CLIENTS
- RPC 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE
- RPC 1.6 CONFIDENTIALITY OF INFORMATION

WHO IS YOUR CLIENT?

- MOST ETHICAL PROBLEMS CAN BE RESOLVED BY KNOWING THE IDENTITY OF YOUR CLIENT AND THE SCOPE OF YOUR REPRESENTATION.
- RPC 1.13 ADDRESSES WHEN A LAWYER IS EMPLOYED BY AN ORGANIZATION. THE LAWYER REPRESENTS **THE ORGANIZATION** ACTING THROUGH ITS DULY AUTHORIZED CONSTITUENTS.
- In certain circumstances, the lawyer may represent a principal officer or shareholder if there is no conflict of interest (RPC 1.7) and also if the lawyer is acting as an intermediary between the organization and a constituent (RPC 2.2)

FOR COUNTY ATTORNEYS THE SCOPE OF REPRESENTATION IS SET OUT IN THE COUNTY CHARTER.



CONFLICTS IN REPRESENTING THE ORGANIZATION

- IN DEALING WITH AN ORGANIZATION'S DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, SHAREHOLDERS, OR OTHER CONSTITUENTS, A LAWYER SHALL EXPLAIN THE IDENTITY OF THE CLIENT WHEN THE LAWYER KNOWS OR REASONABLY SHOULD KNOW THAT THE ORGANIZATION'S INTERESTS ARE ADVERSE TO THOSE OF THE CONSTITUENTS WITH WHOM THE LAWYER IS DEALING.

REPRESENTING MULTIPLE CLIENTS WITHIN AN AGENCY

- TN RULES OF PROFESSIONAL CONDUCT, SCOPE(19)
- “...THE RESPONSIBILITIES OF GOVERNMENT LAWYERS MAY DIFFER FROM THOSE OF LAWYERS IN PRIVATE CLIENT-LAWYER RELATIONSHIPS. CERTAIN GOVERNMENT LAWYERS MAY BE AUTHORIZED TO REPRESENT SEVERAL GOVERNMENT AGENCIES, OFFICERS, OR EMPLOYEES IN LEGAL CONTROVERSIES IN CIRCUMSTANCES WHERE A PRIVATE LAWYER COULD NOT REPRESENT MULTIPLE CLIENTS.”
- “...THEY MAY HAVE AUTHORITY TO REPRESENT THE ‘PUBLIC INTEREST’ IN CIRCUMSTANCES WHERE A PRIVATE LAWYER WOULD NOT BE AUTHORIZED TO DO SO.”

APPLICABLE CASE

- IN THE CASE OF WOOD, ET AL. V. METROPOLITAN BOARD OF HEALTH ET AL., 2009 Tenn. App. LEXIS 732 (November 28, 2007), WHICH WAS AN APPEAL CHALLENGING THE ISSUANCE OF SEVERAL PERMITS BY THE AIR POLLUTION DIVISION OF THE METROPOLITAN DEPARTMENT OF HEALTH. PART OF THAT CHALLENGE WAS THE REPRESENTATION OF BOTH THE DEPARTMENT OF HEALTH AND THE BOARD OF HEALTH BY METROPOLITAN DEPARTMENT OF LAW ATTORNEYS.
- THE APPELLANT MAINTAINED THAT THE SAME METROPOLITAN ATTORNEY REPRESENTED THE INTERESTS OF THE DIRECTOR OF THE AIR POLLUTION DIVISION AND THE BOARD OF HEALTH, WHICH WAS NOT SUPPORTED BY THE RECORD WHICH SHOWED THAT TWO DEPARTMENT OF LAW ATTORNEYS REPRESENTED THE TWO PARTIES.
- THE COURT HELD THAT THE METROPOLITAN CHARTER REQUIRES THAT THE DEPARTMENT OF LAW PROVIDE COUNSEL TO THE DEPARTMENT AND THE BOARD. ONE ATTORNEY ADVISED THE BOARD AND ONE ADVISED METRO.

SPECIAL CONFLICTS FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

- **RULE 1.11** ADDRESSES CONFLICTS FOR ATTORNEYS MOVING BETWEEN PRIVATE PRACTICE AND GOVERNMENT PRACTICE.
- THIS RULE IS INTENDED TO WORK WITH THE OTHER CONFLICTS RULES 1.7, 1.9, 1.10.
- **RULE 1.12** ADDRESSES CONFLICTS FOR FORMER JUDGES AND ARBITRATORS

QUERY:

- A woman has asked Attorney to represent her in obtaining compensation for a tract of land that is being condemned by the State Department of Transportation to build a new highway.
- Two years ago, Attorney had been employed by the Department and had been assigned to search title on several tracts of land, including the one owned by the woman.
- Attorney remembers a Department engineer had drafted a confidential memorandum advising against running a new highway across the woman's land because of a potential adverse environmental impact.
- Because of this information, Attorney believes it is possible to prevent the condemnation of the woman's land or to increase the settlement amount.

CAN ATTORNEY TAKE THIS CASE?



RULE 1.11(c)

- If you obtained confidential government information about a person when you worked for the agency, you cannot represent a private client whose interests are adverse to the person when the information could be used to material disadvantage to that person.
- “Confidential information” means info that the agency is prohibited from revealing and which is otherwise not available to the public.

CAN ANOTHER ATTORNEY IN THE
DISQUALIFIED ATTORNEY'S OFFICE
TAKE THE CASE ?



RULE 1.11

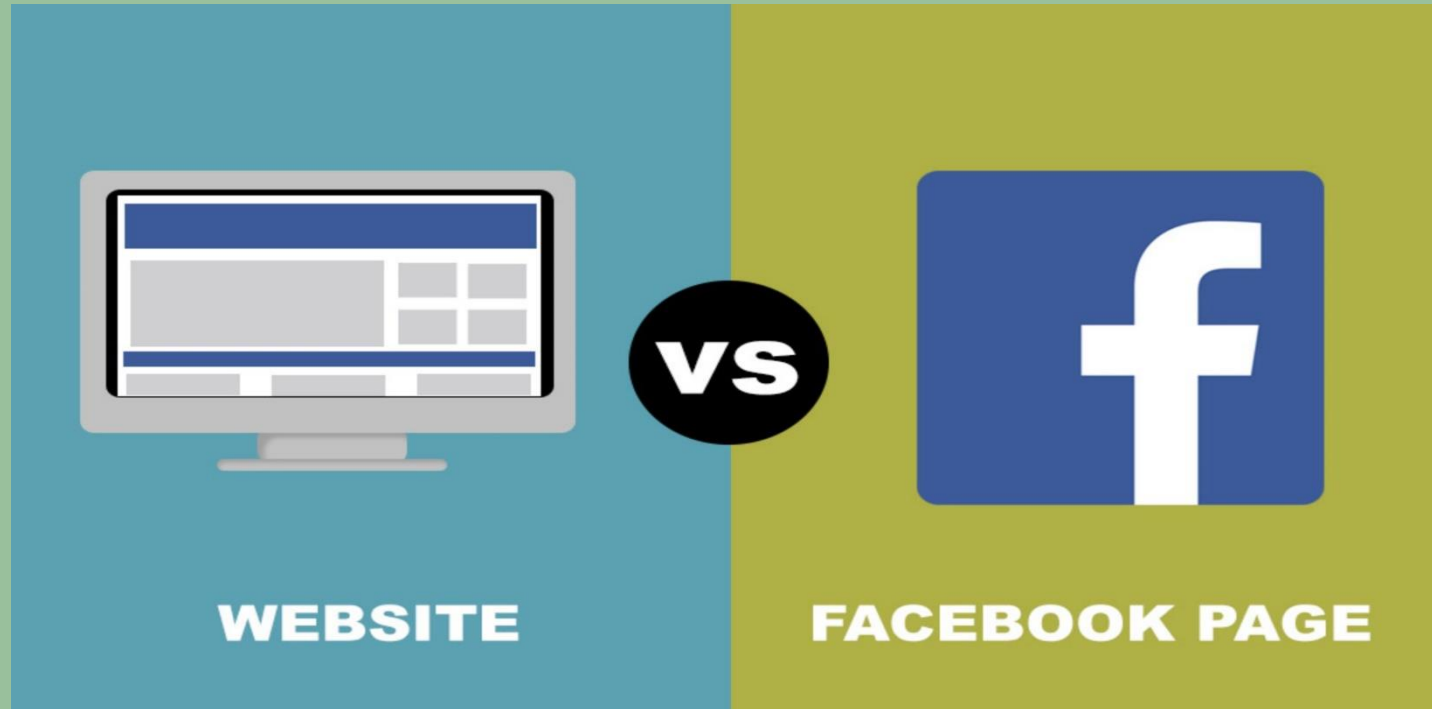
- **IF YOU ARE DISQUALIFIED BECAUSE OF YOUR PRIOR REPRESENTATION OF THE AGENCY, SO IS YOUR LAW FIRM UNLESS YOU IMPLEMENT SCREENING PROCEDURES OUTLINED IN THE RULE.**

RPC 1.11(b) SETS OUT SCREENING PROCEDURES

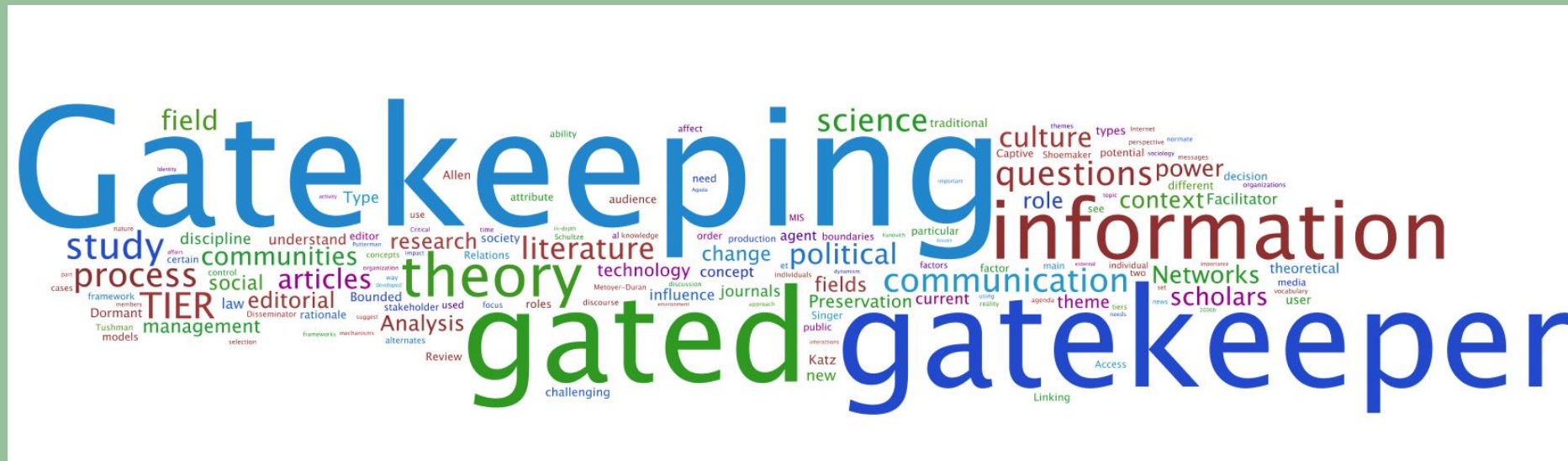
- 1. ASCERTAIN THAT THE PERSONALLY DISQUALIFIED LAWYER IS PROHIBITED FROM PARTICIPATING IN THE REPRESENTATION OF THE CURRENT CLIENT; AND
- 2. DETERMINE THAT NO LAWYER REPRESENTING THE CLIENT HAS ACQUIRED ANY MATERIAL CONFIDENTIAL GOVERNMENT INFORMATION RELATING TO THE MATTER; AND
- 3. PROMPTLY IMPLEMENT SCREENING PROCEDURES TO EFFECTIVELY PREVENT THE FLOW OF INFORMATION ABOUT THE MATTER BETWEEN THE PERSONALLY DISQUALIFIED LAWYER AND OTHER LAWYERS IN THE FIRM; AND
- 4. ADVISE THE GOVERNMENT AGENCY IN WRITING OF THE CIRCUMSTANCES THAT WARRANTED THE UTILIZATION OF THE SCREENING PROCEDURES AND ACTIONS TO COMPLY.

ANOTHER AREA OF CURRENT CONCERN FOR COUNTY ATTORNEYS --- USE OF SOCIAL MEDIA

- IS SOCIAL MEDIA A VIABLE SUBSTITUTE FOR HAVING AN OFFICIAL WEBSITE?



HAVING A WEBSITE ALLOWS THE COUNTY TO MANAGE THE CONTENT, ENFORCE COPYRIGHT PROTECTION, AND PREVENT OTHERS FROM “COPYING AND PASTING” ESSENTIAL INFORMATION. IT ALLOWS THE COUNTY TO GUARD THE LOOK AND LAYOUT OF THE CONTENT.



WHEN USING SOCIAL MEDIA SITES, MANY TIMES THE CONTENT OWNER HAS TO PROVIDE THE SOCIAL MEDIA SITE WITH A PERPETUAL NON-EXCLUSIVE LICENSE TO USE THE CONTENT. THEN THE SOCIAL MEDIA SITE HAS THE COUNTY'S INFORMATION FOREVER.

IF THE COUNTY HAD ITS OWN WEBSITE, IT WOULD BE THE EXCLUSIVE GATE-KEEPER OF ITS OWN CONTENT.

TALKING TO THE MEDIA



THE COUNTY ATTORNEY MAY BE THE FIRST POINT OF CONTACT FOR MEDIA WITH QUESTIONS ABOUT PENDING LITIGATION

RPC 3.6 DESCRIBES WHAT CAN BE DISCLOSED ABOUT A PENDING MATTER.

THE COUNTY ATTORNEY SHOULD REVIEW RPC 3.6 BEFORE ANY INTERVIEW WITH THE MEDIA.



RPC 3.6 - TRIAL PUBLICITY

- (a) A LAWYER WHO IS PARTICIPATING OR HAS PARTICIPATED IN THE INVESTIGATION OR LITIGATION OF A MATTER SHALL NOT MAKE AN EXTRAJUDICIAL STATEMENT THAT THE LAWYER KNOWS OR REASONABLY SHOULD KNOW WILL BE DISSEMINATED BY MEANS OF PUBLIC COMMUNICATION AND WILL HAVE A SUBSTANTIAL LIKELIHOOD OF MATERIALLY PREJUDICING AN ADJUDICATIVE PROCEEDING IN THE MATTER.

(b) NOTWITHSTANDING PARAGRAPH (a), A LAWYER MAY STATE:

- (1) The claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) the information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

- (7) in a **criminal case**, in addition to subparagraphs (1) through (6);
 - (i) the identity, residence, occupation, and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time, and place of arrest; and
 - (iv) the identity of the arresting officers or agencies and the length of the investigation.

- (c) NOTWITHSTANDING PARAGRAPH (a), A LAWYER MAY MAKE A STATEMENT THAT A REASONABLE LAWYER WOULD BELIEVE IS REQUIRED TO PROTECT A CLIENT FROM THE SUBSTANTIAL UNDUE PREJUDICIAL EFFECT OF RECENT PUBLICITY NOT INITIATED BY THE LAWYER OR THE LAWYER'S CLIENT. A STATEMENT MADE PURSUANT TO THIS PARAGRAPH SHALL BE LIMITED TO SUCH INFORMATION AS IS NECESSARY TO MITIGATE THE RECENT PUBLICITY.
- (d) NO LAWYER ASSOCIATED IN A FIRM OR GOVERNMENT AGENCY WITH A LAWYER SUBJECT TO PARAGRAPH (a) SHALL MAKE A STATEMENT PROHIBITED BY PARAGRAPH (a).

ARE POSTS TO FACEBOOK OR OTHER SOCIAL MEDIA CONSIDERED PUBLIC RECORDS ?



WHAT IS A PUBLIC RECORD ? TEST

- THE TN SUPREME COURT SAYS THAT THE TEST FOR DETERMINING WHETHER A RECORD IS PUBLIC IS “WHETHER IT WAS MADE OR RECEIVED PURSUANT TO LAW OR ORDINANCE OR IN CONNECTION WITH THE TRANSACTION OF OFFICIAL BUSINESS BY ANY GOVERNMENT AGENCY.”
- *GRIFFIN V. CITY OF KNOXVILLE*, 821 S.W. 2D 921, 924 (Tenn. 1991)

PUBLIC RECORD DEFINED

- “PUBLIC RECORD OR RECORDS’ OR ‘STATE RECORD OR RECORDS’ MEANS ALL DOCUMENTS, PAPERS, LETTERS, MAPS, BOOKS, PHOTOGRAPHS, MICROFILMS, ELECTRONIC DATA PROCESSING FILES AND OUTPUT, FILMS, SOUND RECORDINGS, OR OTHER MATERIAL, REGARDLESS OF PHYSICAL FORM OR CHARACTERISTICS MADE OR RECEIVED PURSUANT TO LAW OR ORDINANCE OR IN CONNECTION WITH THE TRANSACTION OF OFFICIAL BUSINESS BY ANY GOVERNMENTAL AGENCY.”
- *T.C.A. SECTION 10-7-0503(a)(1)*

IF A COUNTY COMMISSIONER POSTS
COUNTY BUSINESS ON A PERSONAL
BLOG—THAT IS LIKELY A PUBLIC RECORD
SUBJECT TO PRODUCTION



CAN A CITY BE REQUIRED TO PROVIDE ACCESS TO CELL PHONES PURCHASED BY THE CITY THAT HAVE SERVICE PAID FOR BY THE CITY TO RESPOND TO A PUBLIC RECORDS REQUEST FOR ALL TEXT MESSAGES SENT AND RECEIVED ON PHONES BY CITY EMPLOYEES ?



OPINION OF STATE OF TENNESSEE COMPTROLLER'S OFFICE May 16, 2011

- THE CITY IS NOT REQUIRED TO PROVIDE THE REQUESTOR PHYSICAL ACCESS TO CITY OWNED CELLULAR PHONES IN ORDER FOR REQUESTOR TO INSPECT TEXT MESSAGES SENT AND RECEIVED FROM THOSE PHONES. HOWEVER, IT IS THE OPINION OF THIS OFFICE THAT THE CITY IS REQUIRED TO TAKE WHATEVER STEPS ARE NECESSARY TO MAKE THOSE TEXT MESSAGES THAT ARE “PUBLIC RECORDS”, THAT ARE NOT CONFIDENTIAL, AND ARE MAINTAINED ON THE 200 CITY OWNED CELLULAR PHONES ACCESSIBLE TO THE REQUESTOR WHETHER IT BE THROUGH COPIES AND/OR INSPECTION.

WHAT IF THE CITY EMPLOYEE USES HIS/HER OWN PERSONAL PHONE TO CONDUCT CITY BUSINESS AND THE CITY PAYS A SET AMOUNT EACH MONTH AS A STIPEND TO DEFRAY THE COST OF USING THE PHONE FOR CITY BUSINESS, AND THE PHONE CAN SEND AND RECEIVE EMAILS. ARE THOSE EMAILS SUBJECT TO THE PUBLIC RECORDS ACT ?



OPINION OF STATE OF TENNESSEE
COMPTROLLER'S OFFICE February 8, 2011

- IF A CITY EMPLOYEE USES HIS/HER OWN PERSONAL PHONE TO CONDUCT CITY BUSINESS AND THE CITY PAYS A SET AMOUNT EACH MONTH AS A STIPEND TO DEFRAY THE COST OF USING THE PHONE FOR CITY BUSINESS, AND THE PHONE CAN SEND AND RECEIVE EMAILS, ANY EMAIL SENT OR RECEIVED ON THAT PHONE THAT IS RELATED TO CITY BUSINESS IS A PUBLIC RECORD.

LET'S TAKE A QUIZ ON SOME QUESTIONS THAT I
HAVE BEEN ASKED BY GOVERNMENT ATTORNEYS



1. AS COUNTY ATTORNEY CAN I BE COMPELLED TO ASSIST CITIZENS IN OUSTING A LOCALLY ELECTED OFFICIAL?

2 WHAT IF THE COUNTY EXECUTIVE ASKS ME TO BRING AN OUSTER SUIT AGAINST A COMMISSIONER THAT IS A GOOD FRIEND OF MINE AND I THINK THAT I HAVE A CONFLICT WHAT SHOULD I DO ?

3. I AM A COUNTY ATTORNEY. DO I HAVE A CONFLICT OF INTEREST IN INVESTIGATING A COMMISSIONER FOR A COUNTY WHICH EMPLOYEES ME ?

4. I AM A COUNTY ATTORNEY AND THE COUNTY COMMISSION MEMBERS WANT TO MEET WITH ME TO DETERMINE WHAT ACTION TO TAKE WITH REGARD TO A POTENTIAL LAWSUIT. DOES THIS VIOLATE THE OPEN MEETINGS ACT?

5. I AM A COUNTY ATTORNEY AND THE COMMISSIONERS HAVE VIOLATED THE OPEN MEETINGS ACT. IS THERE ANY WAY TO FIX THIS PROBLEM?

6. CAN A MUNICIPAL GOVERNMENT SUE ONE OF IT'S OWN AGENCIES?

1. AS COUNTY ATTORNEY CAN I BE COMPELLED TO ASSIST CITIZENS IN OUSTING A LOCALLY ELECTED OFFICIAL?



ANSWER: YES

- “CITY AND COUNTY ATTORNEYS ARE NOT ONLY EMPOWERED TO SEEK THE OUSTER OF THEIR OWN CLIENTS, BUT IN CERTAIN CIRCUMSTANCES ARE COMPELLED TO DO SO.
- FOR INSTANCE, IN THE EVENT A GROUP OF 10 OR MORE CITIZENS SEEKS TO OUST A LOCALLY ELECTED OFFICIAL, THE CITY OR COUNTY ATTORNEY REPRESENTING THAT OFFICIAL CAN BE COMPELLED TO ASSIST THE CITIZENS IN REMOVING HIM OR HER. THE STATUTE SPECIFICALLY REQUIRES CITY AND COUNTY ATTORNEYS TO AID AND ASSIST SUCH CITIZENS IN THE PROSECUTION OF OUSTER PROCEEDINGS AGAINST CITY AND COUNTY OFFICIALS.” TCA 8-47-111.
- *“You’re Out of There!” by Joseph Jarrett* *Tennessee*
Bar Association 2/1/16.

RUTHERFORD COUNTY DA, COUNTY ATTORNEY SCOLDED IN SHERIFF ARNOLD CASE

- CHANCELLOR YOUNG’S RULING THAT SUSPENDED JAILED SHERIFF ROBERT ARNOLD ALSO SCOLDED DISTRICT ATTORNEY GENERAL AND COUNTY ATTORNEY FOR NOT PARTICIPATING IN THE OUSTER SUIT.
- “WHILE THE DISTRICT ATTORNEY AND THE COUNTY ATTORNEY MAY HAVE HAD GOOD REASONS FOR NOT ASSISTING THE PLAINTIFFS, BOTH OFFICES REMAIN UNDER A STATUTORY RESPONSIBILITY TO DO SO.” “FUTHER IF THE DISTRICT ATTORNEY AND HIS OFFICE ARE DISQUALIFIED FROM ASSISTING THE PLAINTIFFS, TENNESSEE LAW PROVIDES A MECHANISM FOR THE DISTRICT ATTORNEY TO MEET HIS OFFICE’S OBLIGATION UNDER (THE STATE CODE) BY OBTAINING THE APPOINTMENT OF A DISTRICT ATTORNEY GENERAL PRO TEM.”
Chancellor William Young

IN THE EVENT THAT A GROUP OF 10 OR MORE CITIZENS SEEK TO OUST A LOCALLY ELECTED OFFICIAL, THE CITY OR COUNTY ATTORNEY REPRESENTING THAT OFFICIAL CAN BE COMPELLED TO ASSIST THE CITIZENS IN REMOVING THE OFFICIAL. *TCA 8-47-111* SPECIFICALLY REQUIRES CITY AND COUNTY ATTORNEYS TO AID AND ASSIST SUCH CITIZENS IN THE PROSECUTION OF OUSTER PROCEEDINGS AGAINST CITY AND COUNTY OFFICIALS.



2. WHAT IF THE COUNTY EXECUTIVE ASKS ME TO BRING AN OUSTER SUIT AGAINST A COMMISSIONER THAT IS A GOOD FRIEND OF MINE AND I THINK THAT I HAVE A CONFLICT WHAT SHOULD I DO ?



QUESTIONS CONCERNING WHETHER THE ACTIVITIES BY THE COUNTY ATTORNEY ARE PERMITTED BY THE ETHICAL CANONS GOVERNING THE PRACTICE OF LAW SHOULD BE ADDRESSED TO THE BOARD OF PROFESSIONAL RESPONSIBILITY.

- *TENNESSEE ATTORNEY GENERAL'S OPINION NO. 00-129, AUGUST 14, 2000.*

RULE 1.7 APPLIES HERE.

- “A LAWYER SHALL NOT REPRESENT A CLIENT IF THE REPRESENTATION INVOLVES A CONCURRENT CONFLICT OF INTEREST EXISTS.”
- “A CONCURRENT CONFLICT OF INTEREST EXISTS IF THERE IS A SIGNIFICANT RISK THAT THE REPRESENTATION OF ONE OR MORE CLIENTS WILL BE MATERIALLY LIMITED BY THE LAWYER’S RESPONSIBILITIES TO ANOTHER CLIENT, A FORMER CLIENT, OR A THIRD PERSON **OR BY A PERSONAL INTEREST OF THE LAWYER.**”
- *TENNESSEE RULES OF PROFESSIONAL CONDUCT 1.7(a)(2).*

3. I AM A COUNTY ATTORNEY. DO I HAVE A CONFLICT OF INTEREST IN INVESTIGATING A COMMISSIONER FOR A COUNTY WHICH EMPLOYEES ME ?



A COMPARABLE QUESTION WAS THE SUBJECT OF AN ATTORNEY GENERAL'S OPINION AS TO WHETHER CITY ATTORNEY HAS A CONFLICT OF INTEREST IN INVESTIGATION AN OUSTER COMPLAINT AGAINST A COMMISSIONER FOR A CITY WHICH EMPLOYS THE ATTORNEY.



“No Statute prohibits a city attorney from investigating an ouster complaint against a commissioner for a city which employs the attorney. Questions concerning whether such activities by a City Attorney are permitted by the ethical canons governing the practice of law should be addressed to the Board of Professional Responsibility.”

Attorney General Opinion No. 00-129, August 14, 2000.



4. I AM A COUNTY ATTORNEY AND THE COUNTY COMMISSIONERS WANT TO MEET WITH ME TO DETERMINE WHAT ACTION TO TAKE WITH REGARD TO A POTENTIAL LAWSUIT. DOES THIS VIOLATE THE OPEN MEETINGS ACT?



SMITH COUNTY EDUCATION ASSOCIATION V. ANDERSON, 676 S.W. 2d 328, 334 (TENN. 1984)
GIVES GUIDANCE ON THIS ISSUE.



TENNESSEE'S OPEN MEETING ACT PROVIDES THAT THE FORMATION OF PUBLIC POLICY AND DECISIONS IS PUBLIC BUSINESS AND SHALL NOT BE CONDUCTED IN SECRET.

TENNESSEE CODE ANNOTATED SECTION 8-44-101(a).

- THEREFORE, IF THE COMMISSION MEMBERS WANT TO DISCUSS IN A CLOSED MEETING WHAT ACTION TO TAKE, SUCH DISCUSSION WOULD VIOLATE THE OPEN MEETINGS ACT.
- THE OPEN MEETINGS ACT MAY NOT, HOWEVER, RESTRICT THE COMMISSION FROM CONFERRING IN PRIVATE WITH ITS LEGAL COUNSEL CONCERNING PENDING OR THREATENED LITIGATION.
ARTICLE II, SECTIONS 1 AND 2 OF THE TENNESSEE CONSTITUTION.
- **DISCUSSION WITH COUNSEL REGARDING PENDING OR THREATENED LITIGATION IS A VERY NARROW EXCEPTION TO OPEN MEETINGS ACT.**

- “THE EXCEPTION **IS LIMITED** TO MEETINGS IN WHICH DISCUSSION OF PRESENT AND PENDING LITIGATION TAKES PLACE. CLIENTS MAY PROVIDE COUNSEL WITH FACTS AND INFORMATION REGARDING THE LAWSUIT AND COUNSEL MAY ADVISE THEM ABOUT THE LEGAL RAMIFICATIONS OF THOSE FACTS AND THE INFORMATION GIVEN TO HIM. HOWEVER, **ONCE ANY DISCUSSION, WHATSOEVER, BEGINS AMONG THE MEMBERS OF THE PUBLIC BODY REGARDING WHAT ACTION TO TAKE** BASED UPON ADVICE FROM COUNSEL, WHETHER IT BE SETTLEMENT OR OTHERWISE, SUCH DISCUSSION SHALL BE OPEN TO THE PUBLIC AND FAILURE TO DO SO SHALL CONSTITUTE A **CLEAR VIOLATION OF THE OPEN MEETINGS ACT.**”

- *Smith County Education Association v. Anderson, 676 SW 2d. 328, at 334 (Tenn. 1984)*

5. I AM A COUNTY ATTORNEY AND THE COMMISSIONERS HAVE VIOLATED THE OPEN MEETINGS ACT. IS THERE ANY WAY TO FIX THIS PROBLEM?



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*JOHNSTON V. METRO GOV'T OF NASHVILLE AND
DAVIDSON CTY, 320 S.W.3d 313 (Tenn. Ct. App. 2009)*

- CURING THE VIOLATION IS ALLOWED UNDER THIS CASE.
- RESIDENTS OF A NEIGHBORHOOD WHO OPPOSED ZONING CHANGE FILED SUIT SEEKING WRIT OF CERTIORARI TO REVIEW THE ADOPTION OF ORDINANCE, CONTENDING THAT ITS PASSAGE VIOLATED OPEN MEETINGS LAW, SEPARATION OF POWERS DOCTRINE, AND DUE PROCESS. THE CHANCERY COURT DENIED WRIT AND RESIDENTS APPEALED.

THE COURT OF APPEALS HELD:

- 1. EMAIL COMMUNICATION AMONG THE METROPOLITAN COUNCIL MEMBERS VIOLATED OPEN MEETINGS ACT;
- 2. COUNCIL MEMBERS' MEETING IN COUNCIL'S BACK CONFERENCE ROOM DID NOT VIOLATE THE OPEN MEETINGS ACT;
- 3. NEW AND SUBSTANTIAL RECONSIDERATION OF THE ISSUES BEFORE PASSAGE OF ORDINANCE CURED ANY VIOLATION OF OPEN MEETINGS ACT;
- 4. ENABLING STATUTE AUTHORIZING ZONING COMMISSION TO ADOPT DESIGN GUIDELINES FOR MUNICIPAL DISTRICT DID NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE; AND
- 5. TRIAL COURT'S DECISION TO RESTRICT DISCOVERY WAS NOT ABUSE OF DISCRETION.

ADMINISTRATIVE LAW AND PROCEDURE

TCA 8-44-101 et seq.

- EVEN IF THERE HAS BEEN A VIOLATION OF THE OPEN MEETINGS ACT, THE PUBLIC BODY'S ACTION WILL NOT BE VOIDED IF, AFTER THE VIOLATIVE CONDUCT OCCURRED, THERE WAS A NEW AND SUBSTANTIAL RECONSIDERATION OF THE ISSUES INVOLVED AT WHICH THE PUBLIC COULD BE PRESENT.

6. CAN A MUNICIPAL GOVERNMENT SUE ONE OF IT'S OWN AGENCIES?



ANSWER: YES

- THE TENNESSEE SUPREME COURT HAS RULED THAT THE METROPOLITAN GOVERNMENT OF NASHVILLE HAD STANDING TO SUE IT'S OWN AGENCY, THE BOARD OF ZONING APPEALS OF NASHVILLE.
- *THE METROPLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE V. THE BOARD OF ZONING APPEALS OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE ET AL., 477 S.W.3d 750 (TN. 2015).*
- THE COURT HELD THAT IT IS POSSIBLE FOR METRO TO BE “AGGRIEVED” BY A DECISION OF ITS BOARD OF ZONING APPEALS.
- METRO ALLEGED THAT THE BOARD OF ZONING APPEALS DECISION WILL INTERFERE WITH ITS DUTY TO ENFORCE CERTAIN OF ITS ORDINANCES. THE COURT FOUND METRO HAD STANDING TO SUE ITS BOARD BECAUSE IT WOULD BE UNABLE TO ENFORCE CERTAIN OF ITS ORDINANCES. *The case was remanded to the chancery court for further proceedings.*

HOW DID YOU DO ON THE QUIZ ?



ETHICS

update

THE BOARD HAS ISSUED 3 NEW FORMAL ETHICS OPINIONS



PROSECUTOR'S DUTY TO DISCLOSE EVIDENCE FAVORABLE TO DEFENSE

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2017-F-163

The Board of Professional Responsibility has been requested to issue a Formal Ethics Opinion regarding the Prosecutors' Ethical Obligations to Disclose Information Favorable to the Defense.

OPINION

Tennessee Rule of Professional Conduct 3.8(d) is a separate ethical obligation of prosecutors and was not meant to be coextensive with a prosecutor's legal disclosure obligations. This ethical duty is separate from disclosure obligations imposed under the Constitution, statutes, procedural rules, court rules, or court orders. A prosecutor's ethical duty to disclose information favorable to the defense is broader than and extends beyond *Brady*. Once a prosecutor knows of evidence and information that tends to negate the guilt of the accused, or mitigates the offense, or otherwise falls within RPC 3.8(d)'s disclosure requirement, the prosecutor ordinarily must disclose it as soon as reasonably practicable.

ADVERTISING – USE OF TRADE NAME

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2017-F-164

The Board of Professional Responsibility has been requested to issue a Formal Ethics Opinion regarding the opening and operation of a proposed interstate law firm, using a trade name, SETCO Law (the “Firm”).

OPINION

Interstate law firm partnerships are permitted if they comply with The Tennessee Rules of Professional Conduct. Such interstate law firm partnerships may use a tradename if it complies with RPC 7.1 and RPC 7.5. Interstate law firm partnerships may lease space from a title company if there is a distinct separation between the law firm and the title company with regard to entry way, signage, letterhead, business cards, etc., and the customers of the law related services are advised that the protections of the client-lawyer relationship do not apply to the provision of the law related services of the title company, preferably in writing.

ADVERTISING – LEGAL MARKET PLACE

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2018-F-165

The Board of Professional Responsibility has been requested to issue a Formal Ethics Opinion regarding the ethical implications of a website owned and operated by a company on which businesses and individuals may post a description of legal services for which they are seeking representation and lawyers/law firms may subsequently submit quotes for the cost of the legal services.

OPINION

The proposed legal marketplace website, owned and operated by a company on which businesses and individuals may post a description of legal services for which they are seeking representation and lawyers/law firms may subsequently submit quotes for the cost of the legal services, appears to comply with the Tennessee Rules of Professional Conduct if it is operated in accordance with the conditions and guidelines set forth in this opinion.

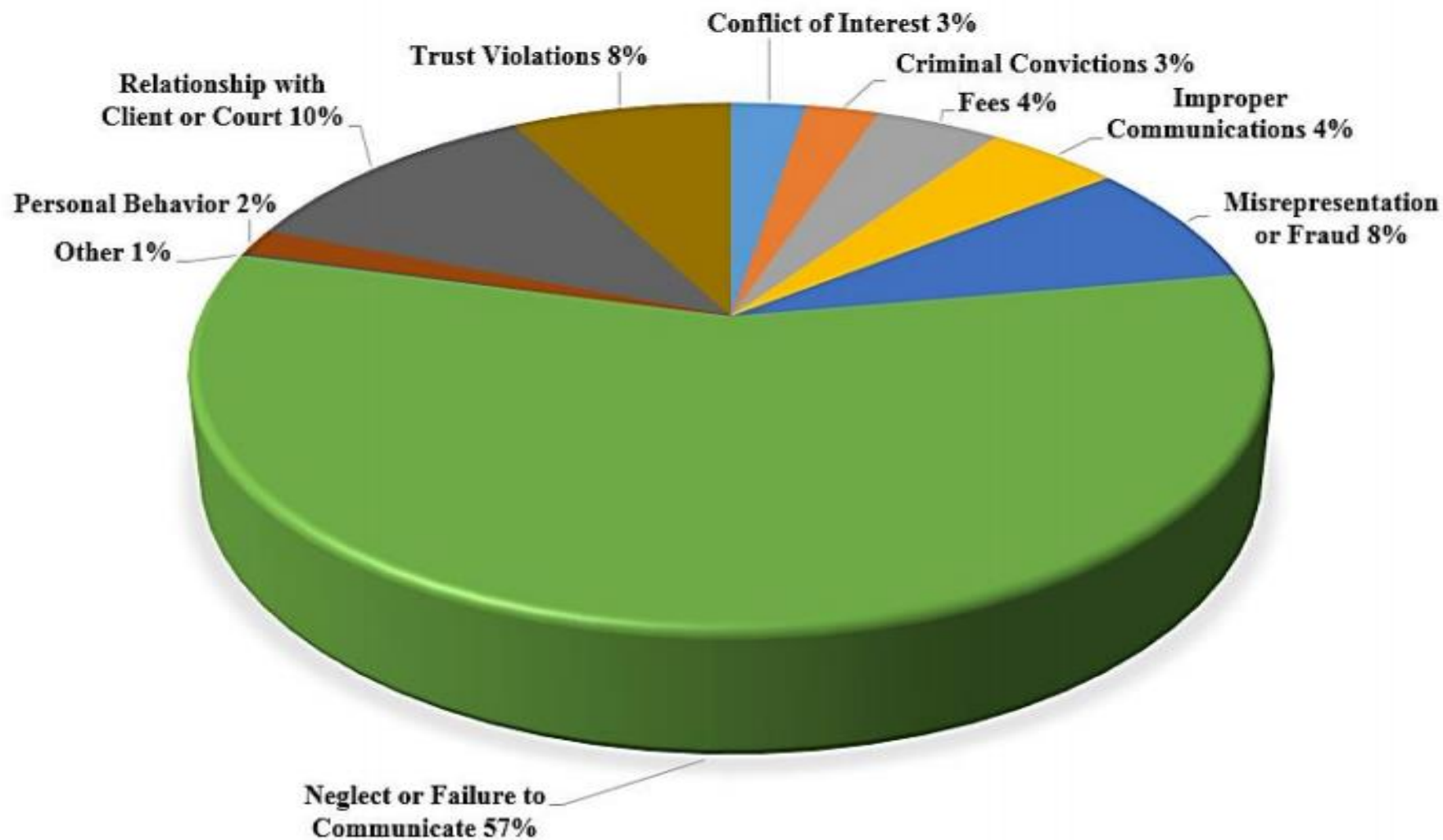


The Supreme Court Revises Rule 9, § 32.1

On March 13, 2017, the Board of Professional Responsibility filed a petition asking the Court to amend Rule 9, Section 32 of the Rules of the Tennessee Supreme Court. The petition proposed amending the Rule to clarify that attorney disciplinary hearings are open to the public, unless subject to a protective order. On August 30, 2017, the Court granted the Board's Petition. [Click here](#) to read more about this Rule change.

36th Annual Discipline Report
Fiscal Year July 1, 2016 – June 30, 2017

A. Nature of Complaints



LAST YEAR'S DISPOSITION OF INVESTIGATIVE COMPLAINTS

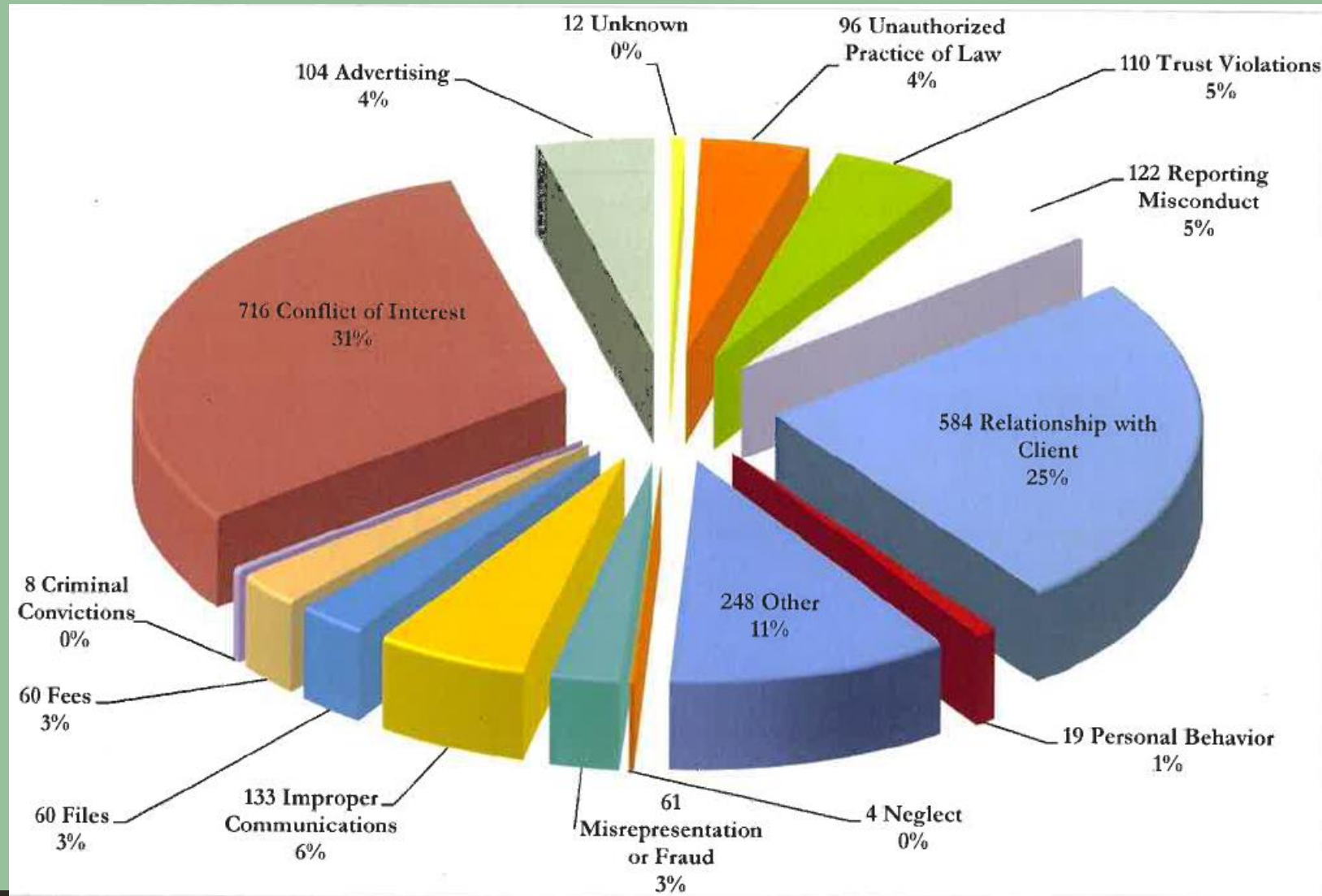
- **Investigative Complaint Disposition:**
- Administrative Dismissals: 510
- Investigative Dismissals: 504
- Diversions: 30
- Private Informal Admonitions: 60
- Private Reprimands: 35
- Informal Public Censures: 46
- Transfer to Disability Inactive: 46
- Placed on Retired Status: 13
- Other: 10
- **Total: 1,254**


THE GOOD NEWS!

- 81 % OF INVESTIGATIVE COMPLAINTS WERE DISMISSED.



ETHICS INQUIRIES FROM 1-1-17 THROUGH 12-31-17 (2,337)





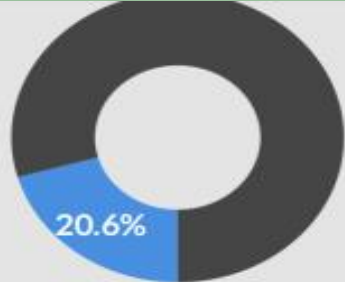
Update on National Task Force on Lawyer Well-Being

On August 14, 2017, the ABA's Commission on Lawyer Assistance Programs released a comprehensive report, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change," aimed at addressing the problem of substance use and mental health disorders of lawyers. ([Click here for full report.](#))

The Task Force was conceptualized and initiated by the ABA Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL) and was created in response to the 2016 landmark research that gathered national data regarding abuse, mental health issues and help-seeking behaviors of lawyers. ([Click here for research findings.](#)) Its participating entities currently include the following: ABA CoLAP; ABA Standing Committee on Professionalism; ABA Center for Professional Responsibility; ABA Young Lawyers Division; ABA Law Practice Division Attorney Wellbeing Committee; The National Organization of Bar Counsel; Association of Professional Responsibility Lawyers; National Conference of Chief Justices; and National Conference of Bar Examiners.

Laura McClendon, Executive Director of the Tennessee Lawyers Assistance Program (TLAP) and current CoLAP Commissioner, was one of the peer reviewers of the report prior to it being released nationally. Ms. McClendon said "Tennessee is on the forefront of responding and addressing the concerns and recommendations in the report. It's exciting to see the collaboration and conversations that have already started!"

The report's recommendations focus on five central themes: (1) identifying stakeholders and the role each one has in reducing the level of toxicity in the profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence, (4) educating lawyers, judges, and law students on lawyer well-being issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.



20.6% of respondents scored at a level consistent with problematic drinking.

In comparison, 11.8% of a broad, highly educated workforce screened positive on the same measure.



28% of respondents reported experiencing mild or higher levels of depression.

46% reported concerns with depression at some point in their career.



19% of respondents reported experiencing mild or higher levels of anxiety.

61% reported concerns with anxiety at some point in their career.



11.5% of respondents reported suicidal thoughts at some point during their career.

2.9% reported self-injurious behaviors, and 0.7% reported at least 1 prior suicide attempt.



Rates higher
for younger,
less
experienced
attorneys



Problematic
drinking =
higher levels of
depression,
anxiety and
stress

Barrier #1:
not wanting
others to find
out they
needed help



Barrier #2:
concerns over
privacy or
confidentiality

Confidential
Confidential is
Confidentiality
duty of confide
Confidentialit
ence inform

WHAT CAN WE DO ?

The report's recommendations focus on five central themes: (1) identifying stakeholders and the role each one has in reducing the level of toxicity in the profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence, (4) educating lawyers, judges, and law students on lawyer well-being issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

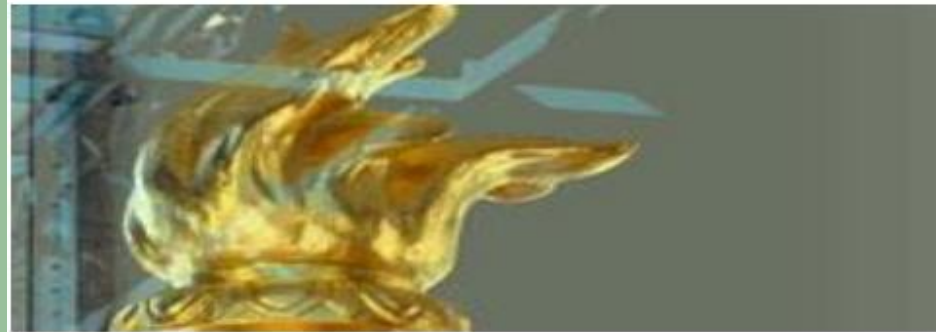
The Tennessee Supreme Court, Administrative Office of the Courts, Board of Professional Responsibility, Board of Law Examiners, CLE Commission, and the Tennessee Lawyers Assistance Program have started round-table discussions with leaders from law firms, bar associations, and law schools to determine the best way to serve, support and help the legal community in Tennessee.

ALL OF THIS INFORMATION CAME FROM
THE BPR NEWSLETTER, “BOARD NOTES”

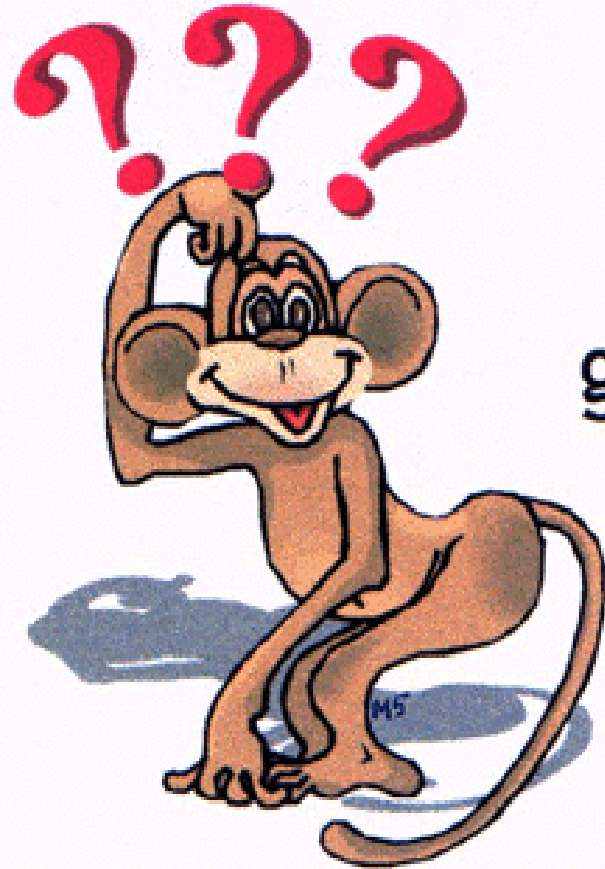
BOARD NOTES

published by the
Board of Professional Responsibility
of the
Supreme Court of Tennessee

Fall 2017



QUESTIONS ?



Questions
are
guaranteed in
life;
Answers
aren't.

CONTACT INFORMATION

- Ethics Counsel – Laura Chastain (615) 361-7500 ext. 212
- Consumer Assistance Program (615) 361-7500
- Tennessee Lawyers Assistance Program (615) 741-3238
- Tennessee Board of Law Examiners (615) 741-3234
- Tennessee Commission on Continuing Legal Education (615) 741-3096
- Tennessee Board of Judicial Conduct (615-649-8851)
- Tennessee Attorney General's Office (615-741-3491)
Unauthorized practice of law: Nate Casey (615-741-2935)



That's all Folks!