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A View from the Inside: The Ethics of Being an In-House School District Attorney, Working With an In-House Counsel, and Being Opposed to an In-House Counsel

Christopher B. Gilbert and Marney Collins Sims

Christopher B. Gilbert
Thompson & Horton LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027
cgilbert@thompsonhorton.com
(713) 554-6744

Marney Collins Sims
Cypress-Fairbanks ISD
10300 Jones Road
Houston, Texas 77065
marney.sims@cfisd.net
(281) 807-8660

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Christopher B. Gilbert
Thompson & Horton LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027
(713) 554-6744
cgilbert@thompsonhorton.com

and

Marney Collins Sims
General Counsel
Cypress-Fairbanks Independent School District
10300 Jones Road
Houston, Texas 77065
(281) 807-8660
marney.sims@cfisd.net

Preamble to the Texas Disciplinary Rules of Professional Conduct (A13)

The responsibilities of government lawyers, under various legal provisions, including constitutional, statutory and common law, may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the public interest in circumstances where a private lawyer would not be authorized to do so. These rules do not abrogate any such authority.

¹ Special thanks to Sandy Hellums-Gomez of Thompson & Horton LLP, who lent us a paper she wrote called "Who's the Boss: Determining Your True Client When Representing a Governmental Entity," which was presented at the Texas Government Lawyers Section of the Texas State Bar's July 14, 2010 "Best Practices for Public Sector Lawyers" Course" in San Antonio, Texas.

Who is an In-House Attorney's Client?

One of the greatest challenges for any in-house counsel is determining who your actual client is – and it is the answer to this question that determines a number of other duties and responsibilities that you may owe that client. Identifying who the client is can be difficult for any attorney representing an entity. This is even more true for attorneys representing governmental entities, given that they are managed by elected officials who represent “the public” (whatever that means). Governmental entities are also subject to laws such as the Texas Open Meetings Act, TEX. GOV'T CODE § 551.001 *et seq.*, and the Texas Public Information Act, TEX. GOV'T CODE § 552.001 *et seq.*, both of which would seem to conflict with an attorney's traditional duty of confidentiality to a specific client, makes determining who the client is for a school district attorney even more difficult.

Commentators have suggested several difficult possible clients for a “government attorney”:

- The supervisor of the attorney's department or agency;
- The agency or department itself;
- The statutory mission of the agency or department;
- The entire government of which that agency or department is a part; and
- The public interest.

Elisa E. Ugarte, *The Government Lawyer and the Common Good*, 40 S. TEX. L. REV. 269, 272 (Spring 1999). While “the public interest” may seem like a pretty vague entity to serve as a client, most government attorneys have probably been told by an irate citizen at some point another that “I pay taxes and taxes pay your salary, so you work for me!” However, as Ugarte points out, “the public” is really too amorphous to serve as an actual client; as she notes, “and where do I go to ask the people's opinion?” *Id.* at 272.²

The danger most often associated with the notion that a government attorney's client is “the public” is that the attorney, lacking a specific client from whom to seek guidance and instruction, may come to substitute his or her own judgment for that of the entity for whom they work. This can harm the working relationship between the attorney and the government officials/employees with whom the attorney works:

² Ugarte actually argues that instead of the “public interest,” a government attorney should represent “the common good.” *Id.* at 274-76. However, given that her major source for that argument is Pope John Paul II's encyclical “The Splendor of Truth,” that doesn't provide a whole lot of practical help, either.

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Also available as part of the eCourse

[School Law: The Ethics of Being, Working with, or Opposed by In-House Counsel: plus Conflicts of Interest](#)

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