

PRESENTED AT**2016 School Law Conference****February 25-26, 2016
Austin, TX****Wheel of Clients: Which One Is Yours?****Amanda Moore, Leila Sarmecanic, and Catosha L. Woods**

Amanda Moore
Texas State Teachers Association
Austin, Texas
amandam@tsta.org
512.476.5355

Leila Sarmecanic
Rogers, Morris & Grover, L.L.P.
Houston, Texas
lsarmecanic@rmglp.com
713.960.6016

Catosha Woods
Houston Independent School District
Houston, Texas
cwoods@houstonisd.org
713.556.7152

WHEEL OF CLIENTS: WHICH ONE IS YOURS?

Ethical Issues Relating to the Various Roles in Which School Lawyers Serve Their Clients

I. INTRODUCTION

The lawyer's role is a complex one. A lawyer provides guidance and advice to a client who may not otherwise receive it in a difficult situation. Because of this responsibility, attorneys are charged with maintaining effective communication regularly with clients and representing their interests in a thoughtful and resourceful way. In advising or otherwise representing a client, a lawyer shall exercise independent professional judgment and render candid advice.¹ In the school law arena, lawyers can play several different roles. They are counselors, investigators, grievance representatives and litigators. For the employees and the school districts, the availability of an attorney for almost any situation provides both comfort and security. The clients have access to legal counsel, legal advice and most importantly, a legal presence for any given situation. For lawyers, however, these multiple roles can sometimes be confusing and problematic when communicating with each other on any given case.

Discussion about the ethical responsibilities of government lawyers often focus on the fact that the client-lawyer relationship between government lawyers and the entities they represent is different from the client-lawyer relationship in private practice.² While it is relatively clear that attorneys of private clients serve the interests of clients within the bounds of the law and ethical rules, legal ethicists have suggested that government lawyers have a broader professional obligation to serve not only the interests of their clients, but also to serve the greater public interest.³ Certain rules of ethics and common law, however, are applicable to both government lawyers and lawyers who represent private individuals.⁴

The Preamble to the Texas Disciplinary Rules of Professional Conduct recognizes that, in providing professional service to a client, a lawyer may serve various roles, each of which requires the lawyer to assume certain specific professional responsibilities to the client:

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's affairs and reporting about them to the client or to others.⁵

Whether a lawyer is serving a client in the role of advisor, advocate, negotiator, intermediary, or evaluator, a lawyer always retains certain duties, such as the duties of loyalty, candor, zealous pursuit of the client's

¹ Tex. Disciplinary R. Prof'l Conduct 2.01.

² See, e.g., Jeffrey Rosenthal, *Who is the Client of the Government Lawyer?*, ETHICAL STANDARDS IN THE PUBLIC SECTOR 13 (1999).

³ See, e.g., Berenson, Steven K., *The Duty Defined: Specific Obligations that Follow From Civil Government Lawyers' General Duty to Serve the Public Interest*, 42 BRANDEIS LAW JOURNAL 13 (2003).

⁴ See, e.g., Hazard, Geoffrey C., Jr., *Conflicts of Interest in Representation of Public Agencies in Civil Matters*, 12 WIDENER JOURNAL OF PUBLIC LAW 211 (2000).

⁵ Tex. Disciplinary R. Prof'l Conduct, Preamble, paragraph 2.

interests within the bounds of the law, competence, promptness, diligence, communication, and confidentiality.⁶

In order to fulfill a lawyer's professional responsibilities to the client, it is critical that the lawyer clearly understand at the outset of representation who the client is. In private practice, it is relatively easy to identify the client when the client is a single individual. However, this question may be complicated when the individual is a minor, in which case the lawyer may not be sure whether to take direction from the child, the child's parent or parents, or whether to await the appointment of a guardian to provide clearer direction. Also, when a third party is compensating the attorney, it can be unclear what the role the third party plays in the attorney-client relationship, such as when a liability insurance company hires an attorney to represent its insured.

Determining the identity of a lawyer's client is more complex when the client is an organization. Whether a lawyer represents a private organization such as a corporation or labor union, or a public organization such as governmental entity like a school district, the organization itself is the lawyer's client. Texas Rule of Disciplinary Conduct 1.12(a) recognizes that a lawyer employed or retained by an organization represents the entity and, "in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents." In certain situations, an attorney may not be able to clearly determine who the organization's "duly authorized constituents" are. This paper explores how the various roles of school attorneys can pose certain ethical challenges within the context of investigations, adjudicatory proceedings, settlement discussions and negotiations.

II. INVESTIGATIONS

A. Overview

In the course of the employment relationship between a school district and its employees, there are times when it becomes necessary to undertake internal investigations. Investigations are sometimes undertaken by the school district when there has been a report of alleged wrongdoing, such as use of excessive force, inappropriate relationships with students, misuse of funds or grade changes. More typically, however, investigations are initiated when there has been a complaint from the employee about harassment, bullying or discrimination. In either case, the school district will need to conduct an investigation to gather facts and decide on the best course of action. Investigations or fact-gathering missions also occur as attorneys prepare to go to hearing on teacher termination cases. These fact-gathering missions are often conducted for the purpose of preparing for hearing, but include reviewing documents, interviewing witnesses and interacting with members of the school district. In all investigative scenarios, members of the bar have the obligation to act ethically in their interactions with clients, represented parties and unrepresented parties. The discussion below aims to assist in issue-spotting ethical pitfalls to assist school attorneys in meeting their ethical obligations.

B. Rules

Rule 1.12 Organization as a Client

- (a) A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b) the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the

⁶ *Id.* at paragraph 3.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Wheel of Clients: Which One Is Yours?

Also available as part of the eCourse

[School Boards: Hearings, Superintendent Contracts and Conflicts, and Conflicts of Interest for the School Attorney—Who Is Your Client?](#)

First appeared as part of the conference materials for the
31st Annual School Law Conference session
"Wheel of Clients: Which One Is Yours?"