

CONFLICT OF INTEREST

In representation of the city and its many sub-entities, conflicts of interest may develop which restrict and prevent the normal activities of attorneys in the office. Except as provided in the Rules of Professional Conduct for Attorneys, SCR 20, attorneys are prohibited from representing two or more positions that are potentially adverse. Except as allowed by SCR 20:1.11, the fact that two attorneys from this office may be performing the activities in no way diminishes the conflict due to the singular responsibility of the City Attorney for those activities. It is the policy of the City Attorney to adhere to, and abide by, the Rules of Professional Conduct for Attorneys.

Under the Rules of Professional Conduct for Attorneys, there are certain situations where the City Attorney may be able to simultaneously represent two city parties with differing interests. See SCR 20:1.11(f). In order to have such representation, we must effectively screen the two lawyers from each other, so that no information is shared. We now call these "Ethical Screens" (updated from "Firewalls") In the event a case arises where this may be necessary (e.g., ALRC prosecution, VOC, perhaps others), the City Attorney should be contacted immediately to make the necessary assignments and communicate the need for the Ethical Screen. In two specific areas, the office should observe an Ethical Screen at all times. These areas are the Ethics Code (sec. 3.35) and the Open Meetings Law (sec. 3.71). Those attorneys who generally provide advice in this area (May, Allen, Brist) and any others who do provide such advice must take care not to communicate the facts of a case to any of the prosecutors.

In specific conflicting situations the following policies have been established. When complaints are filed with the Equal Opportunities Commission against city department heads, the City Attorney will represent the Equal Opportunities Commission, since our ultimate obligation is to prosecute for violations of that ordinance. Second, when a non-union employee appeals a department head's personnel action, the City Attorney represents the department head before the Appeal Examiner and the Personnel Board. Third, in the event of a conflict between the City and a related legal activity such as the Community Development Authority (CDA), the City Attorney normally will represent the City.

In situations where the Police or Fire Chief brings charges before the Police and Fire Commission (PFC), the City Attorney represents the Chief in bring the charges. Outside counsel represents the PFC.

When outside counsel seeks a waiver of a conflict of interest with the City, so that the attorney or the firm may continue representation of the City while also being adverse to the City, the waiver may only be granted by the City Attorney. The presumption is that the waiver will not be granted. The City Attorney will consult with the Mayor on any waiver requests that are to be granted, and may establish more detailed policies on waiver requests.