

Scenario 1

As a private planning consultant, you have just been appointed to the city's planning commission. One of the applications being reviewed by the planning commission at your first meeting has been prepared by another consulting firm. You have some serious concerns about the application that you feel warrant either a redesign of the project or denial of the application. Unknown to your fellow planning commissioners, or to the consultant who prepared the application, you have submitted a proposal for a project in a nearby city for which you know the consultant providing testimony at this planning commission has also submitted a proposal.

HOW DO YOU CONDUCT YOURSELF REGARDING THE CURRENT APPLICATION BEFORE THE PLANNING COMMISSION?

Considerations:

- Recuse yourself?**
- Declare situation regarding proposal, participate in meeting and vote?**
- Declare situation regarding proposal, provide concerns and abstain?**
- Other?**

Scenario 2

You are a city attorney for a mid-sized community. A developer within the community has submitted an application for a new controversial project. The application will be considered first by the planning commission and then by the city council. At this point, the city's planning staff is still working on its analysis and staff report for the planning commission. The senior planner working on the application has come to you with a concern. He explains that one of the city council members has stopped by his office several times to check on the status of the application and asked to review the applicant's traffic study, saying she is very concerned about the traffic impacts and wants to see the draft staff report before it is finalized for the planning commission. The city council member is a traffic engineer by profession and she often focuses on traffic issues in considering land use applications.

IS THE CITY COUNCIL MEMBER'S CONDUCT INAPPROPRIATE? AS THE CITY ATTORNEY, WHAT SHOULD YOU DO?

Considerations:

- To whom do you go with any concerns you may have?
- Should the city council member be required to recuse herself?
- Is this a quasi-judicial or legislative action? Does it matter?
- Other?

Scenario 3

The spouse of a long serving planning director of a large city visits the planning department's offices one day. You have worked for the city for a couple of years as a member of the department's staff. The spouse approaches you about a donation in support of a city council member's re-election campaign. When the spouse showed up at the office, one of your colleagues warned you that the spouse did this every election period and that there was an expectation that each staff member would contribute, though it didn't have to be a large donation. The city has no written policy regarding this activity. Nonetheless, the candidate for which the solicitation is being requested is a candidate that you personally cannot support.

DO YOU, OR DO YOU NOT, CONTRIBUTE A SMALL DONATION?

Considerations:

- AICP Code of Ethical Conduct
- Apparently there is no prohibition regarding this type of activity
- Possible repercussions for not donating
- If you are the new city attorney and learn about this, what should you do?

Scenario 4

You are a partner in a law firm. One of your clients is working on plans for a new golf course community in Verde Valley, which currently has very little development. One of the other attorneys in your firm, Alice, approaches you and says she is concerned about a potential conflict of interest. She explains that her family has had a cabin in Verde Valley for about 50 years and her father is already organizing a group of local owners to oppose your client's project. Alice also confides that she is personally very opposed to the client's project. Alice is a bankruptcy attorney and will not be involved in working on the client's project.

DO YOU HAVE A CONFLICT OF INTEREST PROBLEM? WHAT SHOULD YOU TELL THE CLIENT? CAN ALICE GET INVOLVED IN THE OPPOSITION?

Considerations:

- MRPC 1.7: conflicts of interest because of responsibilities to others or *personal interests*.**
- MRPC 1.10: imputed conflicts of interests between lawyers associated in a firm, with some exceptions.**

Scenario 5

A town council is considering an application for an affordable housing project that is in conformance with the town's master plan. One of the council members is clearly opposed to the application. The council member's family owns undeveloped land near the project's location, but this fact has not come up in the hearing process. This council member is making a number of "factual" statements about the impact of the application that are incorrect, but the other council members appear to believe these statements. The town manager, who typically will turn to the planning staff to ensure misstatements like this are corrected, is being conspicuously quiet. The town's planning manager is convinced that if the one council member's comments are not corrected the application will not be approved. The town attorney is concerned that the town council member has not disclosed the potential conflict of interest represented by his family's ownership of neighboring property.

**SHOULD THE PLANNING MANAGER TAKE THE INITIATIVE TO CORRECT THE MISINFORMATION EVEN WITHOUT THE TOWN MANAGER'S ASSISTANCE?
WHAT SHOULD THE TOWN ATTORNEY DO?**

Considerations:

- AICP Code of Ethical Conduct
- If the planning manager is going to raise the issue, then how should he or she go about it?
- Does the town attorney have a duty to raise the conflict of interest issue?

Scenario 6

You are a partner in a private law firm that represents some local governments. One of your clients is a small county that does not have a full-time legal staff. One of your partners lives in this county and wants to represent his homeowners association in their efforts to obtain approval for a new tennis and swimming recreational facility in their subdivision. The new facility will require obtaining a rezoning approval from the board of county commissioners.

CAN YOUR PARTNER UNDERTAKE THE REPRESENTATION?

Considerations:

- MRPC 1.7(a): No directly adverse representation; no representation if materially limited by attorney's responsibilities to other parties
- MRPC 1.10: imputed disqualification
- MRPC 8.4(e): implying an ability to improperly influence a government agency or official

Scenario 7

The city manager summarizes a meeting that the manager had with the mayor. At that meeting the mayor demanded that your principal planner be removed from working on a project. You are convinced that this demand is the result of a meeting at which the principal planner made some comments that, though truthful, were considered offensive by some of the attendees who probably spoke with the mayor soon after that meeting. As the planning director, you know that replacing the principal planner will delay the project from being completed for many months and would likely result in the repayment of a portion of a grant that was secured to support the staff work. Notwithstanding these facts, the city manager instructs you to find a solution and not speak with the mayor.

WHAT ARE YOUR NEXT STEPS?

Considerations:

- Remove the principal planner?
- Visit with the mayor, directly, to explain the situation despite the city manager's instructions?
- Other?

Scenario 8

You work as an assistant county attorney. You have been working with the planning department on a major PUD for a new shopping center, including the negotiation of a development agreement with the developer's attorney. You impress the developer's attorney. She asks whether she can take you out to lunch to discuss joining her firm.

SHOULD YOU GO TO LUNCH WITH THE ATTORNEY? IF YOU JOIN THE PRIVATE FIRM, CAN YOU OR ANYONE ELSE IN THE FIRM REPRESENT THE DEVELOPER 2 YEARS LATER IN A DISPUTE WITH THE COUNTY OVER THE TERMS OF THE PUD?

Considerations:

- MRPC 1.11(d): cannot negotiate for private employment with an attorney who is representing a party in matter in which you are materially involved.
- MRPC 1.11(a) : cannot represent an existing client against the former governmental client on the same matter or a substantially related matter without the former governmental client's informed written consent.
- MRPC 1.11(b): imputed disqualification applies unless "Chinese Wall" established, no fees go to disqualified attorney, and former governmental client is given notice so it can monitor compliance

Scenario 9

Your consulting firm has delivered its final report to the county concerning the costs and benefits of creating a redevelopment district. The report is scheduled for action by the county commission next week and the recommendation is to create the redevelopment district because your report identifies a positive revenue picture within the first 2 years after the district's creation. The creation of the district will likely result in additional contracts for your firm at a time when most firms are laying off staff, or closing their doors. During your preparation for the commission's action you discover that a wrong formula for anticipated revenues was used. When applying the correct formula, positive revenue probably doesn't result for nearly 7 years. On the other hand, since the report was created, the interest in investing in the district by private companies has increased substantially, which you believe will reduce the 7 year time frame.

HOW WILL YOU PRESENT THE REPORT?

Considerations:

- Request the commission delay the action and re-write the report which will likely affect your firm's profit margin?**
- Verbally provide your new findings with an emphasis on the investment potential?**
- Other?**

Scenario 10

You are an attorney representing on a *pro bono* basis a non-profit group devoted to the preservation of open space and view corridors. A developer is seeking approval from the County for a luxury housing project that will be located along a ridgeline. Your client suspects that the rooftops of some of the houses will be visible above the ridgeline and will create undesirable “silhouetting.” Your client’s *pro bono* planning consultant prepares a simulation showing this will occur. In talking with the planner, you realize the simulation is not based on actual topographic data but is instead merely an illustration of what the suspected silhouetting might look like if it occurred. Your client expects you to lead the presentation opposing the development at the upcoming public hearing and wants you to rely heavily on the simulation.

WHAT CAN YOU SAY ABOUT THE SIMULATION?

Considerations:

- MRCP 3.3(a): candor toward a tribunal**
- MRCP 8.4: integrity of the profession**

Scenario 11

You've been employed by a public sector planning office for nearly 7 years. The prospects for advancement are slim given the organization of the office. You are approached by a private planning firm and offered a position with more responsibility and a significant increase in salary. That firm is negotiating with an applicant to take over from another firm an application presently being reviewed by your office. You are the lead planner reviewing the application and you believe that with some changes, the application would likely be approved. You have not shared this opinion with anyone. It is clear to you that the private planning firm making the offer expects you to manage the application if they take over the application. There is no law preventing you from immediately working on the application as a private sector planner.

WHAT IS YOUR DECISION AND ARE THERE ANY EMPLOYMENT CONDITIONS THAT YOU WILL REQUEST IF YOU ACCEPT THE OFFER?

Considerations:

- AICP Code of Ethical Conduct**
- With whom should you share your opinions?**
- Other?**

Scenario 12

County commissioners approve a controversial commercial project that your client, a large homeowners' association, strongly opposed. In response, you are hired to spearhead a campaign to have two of the commissioners recalled from office. When interviewed by a local reporter, you say, "Those imbeciles don't understand their own code. We're going to kick them out of office. In our opinion, they've violated the public trust."

Have you violated any rules?

Considerations:

- **MRCP 8.2: false statement concerning adjudicatory officers**
- **Freedom of speech?**

Scenario 13

The county for which you work encourages its employees to be involved with the community. You have been providing pro bono assistance over the past few years to a neighborhood in one of the cities in your county. This neighborhood has a substantial poor, minority population. Recently you have been assisting the neighborhood in their efforts to resist a new development sponsored by the city that will eliminate affordable housing. Your assistance has never involved dealing with city staff, or testifying on the neighborhood's behalf; but it is no secret that you do provide this pro bono service. The county and city have recently been at odds over a number of issues. On behalf of the county manager your supervisor has asked you to cease your assistance to this neighborhood so that the city/county conflicts aren't exacerbated because of your pro bono work.

WHAT IS YOUR DECISION?

Considerations:

- AICP Code of Ethical Conduct
- Possible conflict between county encouragement and county manager request?
- Other?

Scenario 14

You are a lawyer in a small firm with several other lawyers. One of your partners sits on the planning commission of the city in which she lives. A client has asked you to represent him in his efforts to obtain a special use permit for a drive-through car wash in this city. Obtaining the special use permit will require public hearings before the planning commission and the city council.

Can you undertake the representation? What if your partner agrees that she will recuse herself when the matter comes up for hearing?

Considerations:

- MRCP 1.7: conflicts of interest created by personal interests or responsibilities to other parties
- MRCP 1.10: imputed disqualification
- MRCP 8.4(e): implying an ability to affect the outcome of a decision