

**LEGAL REPRESENTATION OF MULTIPLE CLIENTS
POLICY**

**Revised
October 2022**

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INTRODUCTION

Under the Pinellas County Charter Section 4.02 and County policies, the County Attorney's Office provides legal representation to the Board of County Commissioners; Constitutional Officers; multiple boards, commissions, and authorities; and—in some circumstances, in their official capacity—officials and employees of County government. In this representation, the County Attorney's Office frequently is charged with addressing legal matters involving multiple clients in a single transaction, lawsuit, or other legal matter.

Legal representation of multiple clients includes many benefits, including the potential reduction of expenses and more efficient resolution of matters; however, it also involves inherent complexity due to the potential for conflicts of interest between clients. Because of this, representation of multiple clients is governed by the Florida Bar Rules of Professional Conduct, and is impacted by various statutes, such as Chapter 111 and Section 768.28, Florida Statutes; County policies, such as Resolution No. 06-83 (Guidelines for Reimbursement of Attorneys' Fees and Costs); and the County's Risk Management Self Insurance Program ("Risk Program"). Based on these guiding authorities, the following policy guides the County Attorney's Office in professionally, ethically, and effectively representing multiple clients.

DEFINITIONS

"Client" means any client of the County Attorney's Office, including: the County; the County's Constitutional Officers; dependent Boards, Commissions, or Agencies of the County unless they have obtained separate counsel; and, in some instances, County officers, officials or employees in their official capacities.

"Agency Client" means the County; the County's Constitutional Officers; dependent Boards, Commissions, or Agencies of the County; or other government agency. It does not include individuals.

"Common Representation" means joint or concurrent representation of two or more clients by the County Attorney's Office on the same legal matter.

"Rules and Policies" means the Florida Bar Rules of Professional Conduct, County Attorney's Office internal policies, and the laws, guidelines, and policy referenced herein.

DISCUSSION / BAR RULES

The Florida Bar's Rules of Professional Conduct govern an attorney's representation of multiple clients, conflicts of interest, and representation of government agencies. Applicable Rules of Professional Conduct include:

1. Conflicts of interest among current clients (r. 4-1.7);
2. Prohibited transactions involving a lawyer and client (r. 4-1.8);
3. Conflicts involving former clients (r. 4-1.9);
4. Imputation of conflicts of interest (r. 4-1.10);
5. Conflicts of interest for former and current government officers and employees (r. 4-1.11);
and
6. Organization as a client (r. 4-1.13).

The purpose of the referenced Rules of Professional Conduct is to establish uniform standards that apply to situations where a lawyer's representation of one client "will be directly adverse" to another client's interest (without that client's consent), taking into consideration the duties of loyalty to a client, and to preserve client confidences.

When representation of multiple clients is undertaken in a single legal matter, Rule 4-1.7(c) therefore requires the following:

1. The attorney must provide all clients with an "explanation" of the common representation, including the implications of the common representation and the advantages and risks involved; and
2. If the clients' interests are or become directly adverse, each affected client must give "informed consent" to the common representation, confirmed in writing, or the attorney must withdraw from representation of one or both clients.

POLICIES

Based on the considerations discussed above, circumstances involving common representation of multiple County Attorney's Office clients will be governed by the following policies; however, a different approach may, at the County Attorney's discretion, be utilized on a case-by-case basis in compliance with the Rules of Professional Conduct and in consultation with impacted clients.

I. CLIENT LEGAL REPRESENTATION

A. MULTIPLE CLIENTS AND COMMON REPRESENTATION

1. Common Representation, Generally

If a legal matter, including litigation, involves two or more clients, the County Attorney's Office may represent all clients in that matter as long as the representation of one client is not directly adverse to another; or, if interests are adverse, if written consent from all clients is obtained as provided in Section II.

a. General Representation

The provision of continuing, general non-litigation legal representation of multiple clients is inherent to the Charter-established role of the County Attorney, and often the County Attorney's Office will provide, through a single attorney or different attorneys, legal advice to multiple clients on the same legal matter. This representation is, by its nature, rarely adverse between clients. However, if it ever appears that such representation could result in the interest of clients being directly adverse to one another in relation to a single matter, the County Attorney's Office will provide notice and seek matter-specific informed consent to continued common representation, under Section II.

b. Litigation

Most litigation matters will require matter-specific informed consent, under Section II. However, there are certain types of litigation that, for some clients and in some instances, may constitute recurring, general, non-adversarial legal representation that would not require matter-specific informed consent. (For

example, representation of the Property Appraiser and Tax Collector in most ad valorem litigation is non-adversarial as the Tax Collector is solely a nominal / necessary party; or, representation of the County and Clerk in a mortgage foreclosure action where priority of interest is established by law). For those recurrent types of cases, the County Attorney's Office will seek acknowledgement of the common representation under Section II (A).

2. Direct Litigation Between Two Clients

In the case of direct litigation or adversarial proceeding brought by one client against another, the CAO will withdraw from representation of all clients, unless one of the parties to the litigation is the County and the conflict is not prohibited, in which case the CAO will represent the County and the other client will obtain outside counsel. Notwithstanding this, other arrangements may be approved as appropriate due to specific circumstances, in accordance with the Rules and policies.

3. Common Representation Involving Individual Officers, Officials or Employees

If a legal matter involves an Agency Client and a County officer, official, or employee (in his/her official capacity), and either 1) the representation of one client is adverse to the other client, or 2) the County officer, official or employee is represented by other counsel in the matter from the outset, the County Attorney's Office will represent the interests of the Agency Client. Outside Counsel will be secured for the officer, official or employee when appropriate, in accordance with other County policies. Notification of the County Attorney's Office representation of the Agency Client will be provided to the officer, official or employee.

B. OUTSIDE COUNSEL

When appropriate, and in accordance with County policies, Outside Counsel may be secured for any client(s) from whom the County Attorney has withdrawn representation, upon request. Additionally, clients may be advised to consider using Outside Counsel for a particular matter. Outside Counsel may not simultaneously represent the County in any matter, even when the matters are unrelated, if such representation would require notice to the County by such Outside Counsel under the Rules of Professional Conduct of The Florida Bar, or their Outside Counsel contract, unless consent is given in accordance with the Rules of Professional Conduct. Outside Counsel will be disqualified from representing the County when Outside Counsel has represented a former client in the same or a substantially related legal matter.

C. INDIVIDUAL OFFICERS, OFFICIALS AND EMPLOYEES

1. The County Attorney's Office will not represent officers, officials, or employees in their individual or personal capacities in matters which do not involve the performance of official duties, or when the officers, officials, or employees are not acting in the course and scope of their governmental employment. Officers, officials, or employees who are alleged to have acted outside of, or with wonton disregard in, the course and scope of their governmental duties, may be represented with a reservation of rights. The County Attorney's Office will provide further

review and/or notification as appropriate when the County Attorney's Office is aware that officers, officials, employees, or their immediate family (spouse, children, parents or siblings) are involved in individual legal matters which also involve the County or a Client Agency.

2. If a legal matter involves a claim or lawsuit against an individual officer, official, or employee named as a defendant in their official capacity and the individual's action arose out of the performance of official duties or while acting in the course and scope of that individual's governmental employment, then the County Attorney's Office may represent the individual in that matter. If such matter also involves an Agency Client, the County Attorney's Office may represent both parties as clients, under the terms of Section II (B). This scenario will most commonly arise in relation to claims or lawsuits for alleged state torts, civil rights, or other matters covered under Pinellas County's Risk Management Self-Insurance Program.

II. NOTIFICATION AND CONSENT

A. Written Notification of General, Ongoing Common Representation

Upon its adoption, the County Attorney's Office will provide a copy of this policy to all current clients and may seek written acknowledgement from clients of the ongoing common legal representation of clients, in substantially the form attached as "Exhibit C."

B. Written Notification of Matter-Specific Common Representation

At the commencement of any matter-specific common representation that is, in the County Attorney's opinion, outside the scope of general, ongoing representation, the County Attorney's Office will make an initial determination that there are no conflicts or adverse interests between clients, and will provide matter-specific written notification to each client in substantially the form attached as "Exhibit A." To the extent possible in litigation matters, the written explanation will be included when notice of the lawsuit is provided.

C. Notice to the County/BCC in Litigation

If a litigation matter involves the County, and a pleading, hearing, or other legal matter must be addressed before the notification can be scheduled on a Commission agenda, the written notification will be delivered to the Chair, with copies to each County Commissioner, and scheduled on a Commission agenda as soon as permissible. The Risk Program will not be treated as a separate client for the purpose of this notification.

D. Consent to Common Representation

1. If the clients consent to the common representation, after notification and approval as required herein and in accordance with the Rules of Professional Conduct, and the representation is not prohibited by law, does not involve the assertion of a position directly adverse to another client, and the lawyer reasonably believes that the lawyer will be able to provide competent and diligent legal representation to each affected client, the County Attorney's Office may represent multiple clients whose interests may become adverse. The written consent must be in substantially the form

attached as “Exhibit B.”

2. Legal representation when there is a conflict of interest (the clients’ interests are adverse) can only be undertaken if written consent is granted by the parties as provided in the Rules of Professional Conduct.
3. If a non-litigation legal matter involves the County Commission, its departments, agencies, boards or commissions, the request for written consent will be presented for consideration at a Commission meeting prior to commencement of the legal representation. If the legal matter is urgent and must be addressed before the request for written consent can be scheduled on a Commission agenda, the written notification will be obtained from the Chair, with copies to each County Commissioner, and ratified on a Commission agenda as soon as permissible.

III. WITHDRAWAL FROM REPRESENTATION

- A. If the interests of multiple clients in relation to a legal matter are determined to be adverse to one another—either in the initial determination or at any time during the course of legal representation—the County Attorney’s Office will do one of the following, as appropriate:
 1. Seek written consent to the common representation from all clients, in substantially the form attached as “Exhibit B,” as further outlined in Section II. If all clients consent, the County Attorney’s Office will represent all clients, with appropriate screening in place in compliance with the Rules and policies.
 2. If all clients do not consent to common representation but do consent to the County Attorney representing one of the clients, the County Attorney’s Office will represent that client, and withdraw from representation of all other clients.
 3. Withdrawal from representation of all clients.
- B. In the case of direct litigation filed by one client against another, the CAO will proceed in accordance with Section I(A)(2).
- C. Notwithstanding any adverse interests between clients, if for *any reason* the County Attorney’s Office determines that their ability to represent a client will be materially limited by the common representation, the County Attorney’s Office will withdraw from representation of all clients unless the clients consent to the County Attorney continuing to represent one of the clients.

IV. AREAS NOT COVERED BY THIS POLICY AND AMENDMENTS

Specifically not covered by this policy are circumstances involving certain administrative or quasi-judicial boards where the County Attorney’s Office represents both the board and staff appearing before the board. Such circumstances do occur and are the subject of case law which addresses due process considerations in these matters. These situations are addressed in the County Attorney’s Office Client Information Screening Policy.

Future updates to this policy may be necessary as the applicable Rules of Professional Conduct are modified or clarified or where circumstances warrant their amendment.

PCAO 390363

EXHIBIT A

(Date)

The Honorable _____
315 Court Street
Clearwater, FL 33756

The Honorable _____
Address _____
Clearwater, FL _____

RE: Representation Advisory

Dear _____ and _____:

As a result of _____, the Office of the County Attorney has undertaken the representation of the following parties: _____ (referred to as “multiple representation” or “common representation”).

I am advising you via this letter of the scope of the representation undertaken for these parties and the results of my review of any known or anticipated conflicts in this multiple representation. This Advisory is published in accordance with the County Attorney policy entitled “Legal Representation of Multiple Clients,” a copy of which is attached to this Advisory.

First, the Office of County Attorney has not, and will not, represent any of the named parties in a personal or private capacity whatsoever.

Second, the nature of the controversy involving the current common representation is: _____.

Third, our conflicts review has not revealed any apparent or reasonably foreseeable conflicts between the named parties that would warrant separate representation. Moreover, we are unaware of any private, personal interests of the named parties that would generate a conflict of interest, or what would appear to be a conflict of interest.

Fourth, common legal representation involves certain benefits and risks. In this instance, common representation reduces expenses and would likely facilitate resolution of this matter. Other benefits may include: _____. The risks associated with common representation always include the possibility that a direct, adverse conflict might later arise. In that instance, a complete withdrawal of the County Attorney from representation of all parties may be required by law, regardless of the consent of the affected parties, although should a conflict later develop, it is the practice of the Office of the County Attorney to secure the consent of all parties to continue its representation of one client (usually, but not always, the County), and other parties will be required to secure outside counsel. If such consent is not secured, the County Attorney will withdraw from representation of all clients. Other apparent risks include: _____.

If you have any questions with regards to this matter, please do not hesitate to call.

Sincerely,

Pinellas County Attorney’s Office

Acknowledgment of receipt of explanation of multiple clients and consent to common representation as described in this correspondence.

(Client, Title)

Date

EXHIBIT B

(Date)

The Honorable _____
315 Court Street
Clearwater, FL 33756

The Honorable _____
Address _____
Clearwater, FL _____

RE: Conflict of Interest Advisory – Conflict Waiver Request

Dear _____ and _____:

As a result of _____, the Office of the County Attorney has undertaken the representation of the following parties: _____ (referred to as “multiple representation” or “common representation”).

I am advising you via this letter that the representation undertaken for these parties involves an actual or potential conflict of interest. This Advisory is published in accordance with the County Attorney policy entitled, “Legal Representation of Multiple Clients,” a copy of which is attached hereto.

Despite the existence of an actual or potential conflict, it is my opinion that representation of the respective parties in this matter will not involve the assertion of a position on behalf of one client that is adverse to another client, as defined in the Legal Representation of Multiple Clients policy. Furthermore, it is my opinion that no substantial risk exists that the representation of either party would be materially limited as a result of the common representation of the parties. I am, therefore, requesting that each client consent to the common representation in this matter. The law requires such consent be expressed either in writing or clearly stated on the record during a hearing.

First, the nature of the controversy is _____.

Second, the nature of the actual or potential conflict of interest is _____.

Third, this representation arises solely from activities involving public responsibilities or activities that occurred within the scope and course of government employment. No party will be represented in their personal or private capacity.

Fourth, our conflicts review has not revealed any actual, or reasonably foreseeable, substantial risk that any party’s representation will be diminished as a result of the conflict or potential conflict identified in this matter. We are unaware of any private, personal interests of the identified parties that would generate any direct, adverse conflict of interest in these multiple representations, or that the appearance of any direct, adverse conflict of interest would occur, especially in light of these public disclosures.

Fifth, common legal representation involves certain benefits and risks. In this instance, common representation reduces expenses and would likely facilitate resolution of this matter. Other benefits may include:

_____. The risks associated with common representation always include the possibility that a direct, adverse conflict might later arise. In that instance, a complete withdrawal of the Office of the County Attorney from representation of all parties may be required by law, regardless of the consent of the affected parties. Should a conflict of interest actually develop in this matter so as to preclude the Office of the County Attorney from continuing its representation of all parties, the County Attorney will seek the consent of all parties to continue its representation of one client (usually, but not always, the County), and other parties will be required to secure outside counsel. If such consent is not secured, the County Attorney will withdraw from representation of all clients. Other apparent risks include:

[If an ethical screen is necessary based on the facts of the case, include the following]: Sixth, we have taken measures, to ensure that the representation of no client is compromised by the common representation referenced above by erecting an ethical screen which prohibits the sharing of information between the attorneys and related staff representing each client, outside of the necessary communications contemplated or required by legal processes, or the Unified Personnel System Rules or Appeal Procedures.

- In this matter, *[attorney A]* will be representing *[entity represented by attorney A]* and *[attorney B]* will be representing *[entity represented by attorney B – may be a department on behalf of its appointing authority]*.
- *[Attorney A]* and *[attorney B]* will retain their files and conduct their legal representation in accordance with County Attorney Client Information Screening Policy, which is attached hereto. Your assistance in that regard is requested. To that end, the following is requested of you:
 - o If you have any questions or need any assistance related to the *[proceeding]*, please contact *[attorney B]* or, if you are unable to reach them, their secretary *[attorney B's matter specific sec]*. If necessary, we will arrange for another attorney, who will be subject to the same ethical screen requirements, to assist you in *[attorney B's]* absence.
 - o Please do not correspond, verbally or in writing, directly with *[attorney A]* or their secretary *[attorney's A matter specific sec]*. From time to time, it may be necessary for *[attorney A's matter specific sec]* or another secretary on *[attorney A's]* behalf to contact you regarding scheduling. Please refrain from sharing any facts, case strategies, or questions with the staff contacting you on *[attorney A's]* behalf.
 - o From time to time, it may be necessary for you to leave a message with the County Attorney's Office receptionist regarding the above-referenced matter. Please refrain from sharing any facts, case strategies, or questions intended for your attorney with the receptionist.

If you have any questions with regards to this matter, please do not hesitate to call.

Sincerely,

Pinellas County Attorney's Office

Acknowledgment of receipt of explanation of multiple clients and consent to common representation as described in this advisory:

(Client, Title)

Date

EXHIBIT C

(Date)

The Honorable _____
315 Court Street
Clearwater, FL 33756

RE: Notification of Regular, Ongoing Common Representation

Dear _____:

This letter serves as a formal explanation of the regular, ongoing common legal representation by the County Attorney's Office (CAO) of you, in your official capacity, and other CAO clients, under Section 4.02 of the County Charter. This is also a request for your informed consent in writing to our continued common representation of multiple clients, as described herein, in compliance with the Florida Rules of Professional Conduct rule 4-1.7 (referred to as "multiple representation" or "common representation").

Each attorney in the CAO's office is governed by ethical obligations established in the Florida Bar Association's Rules of Professional Conduct, and related CAO policies on Legal Representation of Multiple Clients and Client Information Screening, copies of which are attached to this letter. The rules and policies are designed to protect your interests and allow us to continue to provide competent and diligent representation to all of our clients, including when there may be a conflict of interest between clients.

The CAO representation of your agency includes general representation as well as litigation and other adversarial administrative proceedings, summarized as follows:

1. General Legal Representation: This involves non-litigation legal representation of *the [CLIENT AGENCY]* in the performance of constitutional and statutory duties, in coordination with your staff and general counsel (if applicable). Areas of representation include, but are not limited to, contract drafting and review; public records and sunshine law guidance; legislation review or drafting; legal correspondence review or drafting; human resources concerns; and *[List Agency Specific Areas of Representation:]*.
 - a. This general representation does not normally involve or implicate representation of multiple County clients, nor the need to establish ethical screens. However, there are instances when the CAO will provide, through a single attorney or different attorneys, legal advice to both you and another client on the same legal matter. *[List Agency Specific Areas of Representation, if applicable]* By signing below, you acknowledge your understanding of these issues and provide your general consent to our continued representation in these areas when there are conflicts of interest, except as described below.
 - b. In such rare instances that this general representation will result in the interest of your agency being directly or indirectly adverse to another client in relation to a single matter, as defined in the CAO policy on Legal Representation of Multiple Clients, the CAO will discuss the issue with you and obtain, if appropriate, matter-specific informed consent, in writing, to continued common representation. If the conflict of interest is such that it will not be possible for the CAO to provide appropriate representation to multiple parties, the CAO will withdraw from representation of all clients, unless all impacted clients agree that the CAO shall continue to represent one of the clients.

2. Litigation: This involves lawsuits filed by or against your agency, including, but not limited to, claims that are covered by the County's Risk Management program (i.e., tort claims, worker's compensation, and personnel claims) and *[If applicable, List Agency Specific Litigation Areas]*.

a. *[If applicable:]* With regards to the representation of multiple clients in a single litigation matter, there are cases where no wrongdoing is alleged on behalf of client defendants who are named in a nominal or ministerial capacity and the positions of the clients are not adverse. By signing below, you acknowledge your understanding of these issues and provide your general consent to common representation in the following areas:

- *[List Agency Specific Litigation Areas]*

b. With regards to the representation of multiple clients in a single litigation matter outside of the scope of the above-delineated areas, CAO will seek case-specific written consent as required by the Rules and policies. If consent is not secured from all CAO clients, then the CAO will withdraw representation of all clients, unless all impacted clients agree that the CAO shall continue to represent one of the clients. If consent to common representation is secured from all clients, the Client Information Screening Policy (attached) applies.

c. In the case of direct litigation or adversarial proceeding brought by the County against another client, or by any client against the County, the CAO will represent the County and the other client will obtain outside counsel, unless other arrangements are approved in accordance with the Rules and policies.

By this letter, we are providing notice of this ongoing and regular common representation, and by signing below, you are granting informed consent to such common representation. Based on your consent below, it will not be necessary to obtain case-specific consent to common representation in the above-referenced non-adversarial instances. *However*, if there is reason to believe, based on the specific circumstances of any representation, that the interest of any implicated clients may be directly adverse to one another, as defined in the CAO policy on Legal Representation of Multiple Clients, the CAO will seek specific written consent from all clients, or shall withdraw from representation, as discussed in the policy and this letter.

In any matters in which common representation would potentially interfere with the professional judgment of a CAO attorney in considering alternative courses of action that should be pursued on your behalf, the CAO will withdraw from representation and advise you to obtain your own counsel in those matters. If appropriate and desired, the CAO will assist you in retaining outside counsel.

The County Attorney has enjoyed a long relationship with your agency, and we look forward to continuing to provide quality legal services in the most cost-efficient manner possible. While I have attempted to outline the scope of legal representation herein, instances will undoubtedly arise that have not been addressed in this correspondence. We will address those instances individually in compliance with the Rules and CAO policies when they arise.

Neither this letter, nor your acknowledgment and consent, is intended to address or limit your independent authority to select legal counsel or to raise issues of conflict of interest in legal representation as they may arise.

I request that you acknowledge receipt of this Notification of Regular, Ongoing Common Representation, and provide your general consent for the CAO to commonly represent your agency and the CAO's other clients, as described above, by signing below.

The CAO's office is available to respond to any questions you have about this subject at any time.

Sincerely,

Pinellas County Attorney's Office

CLIENT ATTESTATION: I hereby acknowledge receipt of the County Attorney's Office (CAO) *Notification of Regular, Ongoing Common Representation*, and consent to the CAO's common representation, as described above.

Signed

Printed Name

Date