



The Latest in Legal Ethics for Municipal Lawyers

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The logo for Renne Public Law Group (RPLG) features the letters "RPLG" in a bold, blue, serif font, enclosed within a white rectangular box.

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CITY ATTORNEY ETHICS

USE OF ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW

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Growing Role of AI in Legal Practice

1. Legal Research and Document Review
2. Contract Review and Analysis
3. Predictive Analysis
4. Document Automation and Billing



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Ethical Considerations and Risks

1. Competence and Due Diligence

- Rules 1.1 and 1.3
 - Make sure the AI generated information is not false, inaccurate or biased
 - Attorneys using AI should have some understanding of the technology
 - AI should not be a substitute for an Attorney's own judgment
 - AI can be a starting point but the output needs to be scrutinized, reviewed, and validated
 - Attorneys need to ensure the information used is accurate and supports the interests of your client



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Ethical Considerations and Risks

2. Confidentiality and Data Security

- Bus. & Prof. Code, §6068, subd. (e); Rules 1.6 and 1.8.2
 - Need to make sure the AI protects the privacy and confidentiality of client information
 - Need to make sure that your AI tools comply with other applicable privacy regulations
 - Need to scrutinize third-party AI vendors for compliance with privacy laws and confidentiality requirements
 - Seek input from qualified IT experts to help you to comply with these rules



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Ethical Considerations and Risks

3. Duty to Supervise Lawyers and Nonlawyers, Responsibilities of Subordinate Lawyers

- Rule 5.1
 - Adopting policies regarding AI use is one way of making sure attorneys comply with their ethical obligations
 - Make sure you, your subordinate lawyers, and staff receive training on use of AI
 - AI tools should augment but not replace your professional judgment



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Ethical Considerations and Risks

3. Duty to Supervise Lawyers and Nonlawyers, Responsibilities of Subordinate Lawyers

- Rule 5.2
 - Duty to comply with the Rules notwithstanding that the lawyer acts at the direction of another lawyer or other person
 - Subordinate lawyer does not violate Rules if they act in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty



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Ethical Considerations and Risks

3. Duty to Supervise Lawyers and Nonlawyers, Responsibilities of Subordinate Lawyers

- Rule 5.3
 - Duty to make reasonable efforts to ensure that a nonlawyer's conduct complies with the Rules
 - Lawyer is responsible for the conduct of a person if the conduct would be a violation of the Rules where:
 - Lawyer orders or ratifies conduct.
 - Supervisory lawyer knows of the conduct when its consequences can be avoided or mitigated and fails to take remedial action.



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Ethical Considerations and Risks

If use of AI leads to a negative outcome, take responsibility.



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Ethical Considerations and Risks

Taking responsibility:

Smith v. Farwell (Mass. Superior Court)

- Lower took responsibility for not reviewing filings and expressed regret
- Court considered the attorneys forthrightness and regret
- Sanction: \$2,000

United States v. Cohen

- Disbarred lawyer who was the client used AI tool to find cases to support his motion and supplied them to his counsel
- Counsel failed to review the cases before submitting – they were hallucinated
- Counsel took full responsibility and apologized
- No Sanction – Court found no evidence of bad faith



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Ethical Considerations and Risks

Not taking responsibility:

Mata v. Avianca (USDC, Southern Dist, NY)

- Lawyers cited AI-hallucinated cases in an opposition to a motion to dismiss
- When asked, failed to disclose reliance on Chat GPT
- Did not disclose AI use until Judge ordered them to produce cases
- Sanctions: \$5000, letter to client, and each judge referenced in the hallucinated cases

Iovino v. Michael Stapleton Associates (U.S.D.C., Western Dist. Of VA)

- Counsel cited hallucinated cases.
 - Counsel failed to explain source of manufactured citations when asked by the Court
 - OSC issued
-
- People v. Crabill (Colorado)
 - Lawyer filed motion with hallucinated case law
 - Discovered the error
 - When confronted, lawyer blamed legal intern
 - Court suspended the attorney's bar license for one year and one day



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Ethical Considerations and Risks

Failure to adequately comply with AI rules have resulted in:

- \$1,500 in sanctions
- OSCs
- \$15,000 sanction for three separate briefs citing hallucinated law
- \$3,000 in sanctions
- Revoked pro hac vice status
- \$2,500 penalty and mandate to complete one-hour CLE related to AI and Ethics
- Order to pay opposing party's fees in relation to the filings
- Striking of appellate brief resulting in dismissal of appeal
- Court resists temptation to issue OSC and make report to State Bar

Numerous examples of Pro Se litigants

- So far, courts have been more lenient

Exclusion of Evidence

- Expert's use of AI to support damages calculation without being able to explain how it worked resulted in evidence being excluded



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Ethical Considerations and Risks

4. Prohibition of Discrimination, Harassment, and Retaliation

- Rule 8.4
 - Lawyers have an obligation not to unlawfully harass or unlawfully discriminate against persons on the basis of any protected characteristic
 - Because of the way AI learns, the outputs may contain biases
 - AI systems that perpetuate bias may violate these ethical standards



Ethical Considerations and Risks

5. Communication Regarding Generative AI Use

- Rules 1.2 and 1.4
 - Consider whether the use of AI is appropriate in any particular representation based on the facts and circumstances of the representation.
 - Consider whether they need to communicate to the client the risks and benefits of the use of AI,



Ethical Considerations and Risks

6. Charging for Work Produced by Generative AI and Generative AI Costs

- Rule 1.5; Bus. & Prof. Code §§6147 and 6148
 - Attorneys may charge for the actual time spent using AI to create the work product
 - Attorneys must not charge hourly fees for the time saved by using generative AI
 - Costs associated with the AI product may be charged.
 - Fee agreements should explain the basis for all fees and costs associated with the use of generative AI



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Ethical Considerations and Risks

7. Candor to the Tribunal; and Meritorious Claims and Contentions

- Rules 3.1 and 3.3
 - Attorneys must review all generative AI outputs, including, but not limited to, analysis and citations to authority for accuracy before submission to the court.
 - Correct any errors or misleading statements made to the court.
 - Check for any local rules, orders, or other requirements in the relevant jurisdiction that may necessitate the disclosure of the use of generative AI.



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Ethical Considerations and Risks

7. Candor to the Tribunal; and Meritorious Claims and Contentions – Local Rules

- In California, Judge Knill (Superior Court, Orange County) plus nine federal judges have issued standing orders.
- Standing Order for Civil Cases before Northern California District Judge Araceli Martinez-Olguin (revised November 22, 2023) provides, in part, that:
 - Lawyer must confirm accuracy of content created by AI.
 - Counsel is responsible for submission by the represented party.
 - Submission containing AI generated content must include certification that lead trial counsel has personally verified accuracy.
 - Failure to submit certificate is sanctionable.
 - Counsel must maintain records of prompts or inquiries.



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Ethical Considerations and Risks

7. Professional Responsibilities Owed to Other Jurisdictions

- Rule 8.5
 - Attorneys should analyze rules, regulations and Court rules in each jurisdiction they are licensed to practice in.



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Ethical Considerations and Risks

- Best Practices
 - Stay Informed and Educated
 - Learn about AI and potential biases or limitations.
 - Ensure Transparency
 - Inform your clients or ask that your outside counsel inform you
 - Exercise Judgment and Oversight
 - Don't let AI be a substitute for your own judgment
 - Ensure Security and Compliance
 - Make sure your AI tools comply with data and privacy laws
 - Seek professional IT input about the tools you use
 - Monitor AI Outputs for Bias and Accuracy

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EVERYDAY ETHICS FOR CITY ATTORNEYS

Rebecca Moon
City Attorney, Sunnyvale



What Are Everyday Ethics?

Real life ethical situations that city attorneys and attorney staff encounter in day-to-day practice.

- Ethical duties of attorneys as public officials.
- Ethics of government prosecutors and litigators.
- Interactions with opposing parties and public
 - Threatening criminal charges
 - Communicating with represented parties
- Conflicts when representing city employees in litigation

Many more details in the paper!



Essential Resources

- *Practicing Ethics: A Handbook for Municipal Lawyers* (3d ed. 2023)
<https://www.cacities.org/resource/practicing-ethics>
- “Ethical Principles for City Attorneys” (2005)
<https://www.cacities.org/UploadedFiles/LeagueInternet/d6/d60445e6-7918-459b-9780-00a714616297.pdf>
- Joseph Montes, “Ethical Principles for City Attorneys” (2019) <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2019/2019-Spring-Conference/5-2019-Spring;-Montes-Ethical-Principles-for-City>



City Attorneys as Public Officials

Professional Rules "plus"

- **Professional duties:** competence, diligence, zealous advocacy, candor, fairness, civility, integrity, etc.
- **Prof. Rule 1.13:** The city is the client acting through its authorized officials and employees, but:
 - City Attorneys are also public officials who must act in the public interest
 - Should promote rule of law and trust in government (City Attorneys' Dept. Ethical Principle 1)
 - Necessity of giving unwanted advice (contrast Prof. Rule 2.1, Comment 1)
- **Prosecutors:** duty to have probable cause and serve the interests of justice



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Hypothetical #1

The Waste Management Consultant

A newly hired city attorney discovers contracts with the city's waste management consultant that violate Gov't Code § 1090.

Informs the city manager, who declines to take any action.

The city attorney sends a confidential email to the mayor and city council. Mayor responds: "We didn't hire you to upset the apple cart. You should back off if you want to keep this job."

What should the city attorney do next?



Hypothetical #1

Responding to Unlawful Conduct

- **Rule 1.13(b):** refer matter higher in the organization
 - Send a second confidential memo?
 - Hold 1:1 meetings with councilmembers?
 - Closed session? – must meet Brown Act
- **Call the media?** NOPE
 - Duty of confidentiality: Rule 1.13(c), B&P §6068(e)
- **Resign:** YES. See Prof. Rules 1.13(d), 1.16, 1.2.1
- **Sue for wrongful termination?** Probably NOPE
 - Duty of confidentiality will prohibit use of privileged communications unless city waives the privilege



Hypothetical #2

The Politically Sensitive Case

A resident repeatedly calls the mayor with complaints about a neighboring property.

The mayor tells the city attorney, “I don’t want any more calls about this property. You need to do something immediately!”

The city normally starts with administrative citations, but the city attorney directs a deputy city attorney to file a misdemeanor complaint because “this case is extra sensitive.” Is this ethical?



Hypothetical #2

Prof. Rule 3.8: Prosecutorial Ethics

- “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.” (Rule 3.8, Comment 1)
- Cannot be influenced by political pressure or other considerations outside the interests of justice.
- Nuisance abatement actions
 - When filed in the name of the People, cannot hold a closed session or seek direction from City Council
 - When filed in the name of the City, can seek direction but still must act with fairness and impartiality



Prosecuting Civil Litigation

- Courts have referenced prosecutorial duties in other civil litigation handled by gov't lawyers.
- **City of LA v. Decker** (1977) – eminent domain action; attorney for city misled jury about city's intended use of the property
 - **Duty of candor:** Bus. & Prof. Code § 6068(d)
 - **Fairness and Justice:** "A government lawyer in a civil action has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results."
 - **People ex rel. Clancy** (1985) (nuisance abatement): A government lawyer "must not be motivated solely by a desire to win a case, but instead owes a duty to the public to ensure that justice will be done."



Torn from the Headlines

Duties of Candor, Fairness, and Justice

- Erez Reuveni is a career U.S. Attorney who worked in the DOJ civil division for 15 years and was recently promoted to Assistant Director of Immigration Litigation.
- On April 15, 2025, he was fired by the DOJ for not "zealously" defending the mistaken deportation of Kilmar Abrego Garcia.
- Under direct questioning by the District Court judge, Reuveni conceded that he did not have answers to most of the judge's questions and that there was no order authorizing the deportation.



Hypothetical #3

"Be Warned"

The city attorney is asked for help with a hotel that is delinquent on transient occupancy tax.

The city attorney prepares and signs a demand letter that includes the statement at the bottom, "Be warned that failure to pay TOT is a felony misuse of public funds (Penal Code § 424). This matter will be referred to law enforcement and the District Attorney for prosecution if payment is not received."

Was this appropriate?



Threatening Criminal Prosecution

Prof. Rule 3.10(a)

- A lawyer must not threaten criminal or administrative charges to gain an advantage in a civil dispute.
- "All available legal remedies" is okay
- Does not prohibit threatening criminal or admin charges when not tied to resolution of a civil dispute.
- Improper:
 - Directly threatening criminal charges, or stating the law enforcement will be contacted, if dispute not resolved
 - Offering to drop criminal prosecution in return for settlement of a civil case or waiver of liability (except civil compromise under Penal Code § 1378)



Hypothetical #4

"Just Trying to Help"

A plaintiff who is suing the city regularly comes to city hall alone to speak to the mayor or city manager.

One afternoon, the plaintiff becomes argumentative, and staff call the city attorney for help.

The city attorney comes to the counter and ends up talking to the plaintiff for about 10 minutes, mostly defensively as the plaintiff peppers him with questions about the case.

A week later, the city attorney is notified that the plaintiff's attorney has filed a complaint with the State Bar. Is the city attorney in trouble?



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Represented Parties

Prof. Rule 4.2

- Prohibits communications with represented persons without the consent of that person's lawyer.
- Individuals may exercise their 1st Amendment rights to speak directly to other city staff and officials.
- City attorney must not get involved discussions with a represented part about the represented matter even out of a desire to help staff.



Hypothetical #5

"I'm Your Lawyer"

The city attorney sends a standard representation letter to a police officer who is being sued for excessive force, advising him of the city's duty to defend and indemnify him under Gov't Code § 825.

The city attorney subsequently meets with the officer, and tells him "I'm your lawyer."

While the litigation is pending, the officer is terminated for a different incident and sues the city for wrongful termination. The officer's attorney moves to disqualify the city attorney's office from involvement in the wrongful termination case. Does this motion have merit?



Employer vs. Employee Conflicts

Prof. Rules 1.7, 1.9, 1.13

- Because the client is the organization, in-house attorneys can advise different staff who have opposing interests.
- Exception when representing employees in litigation; cannot favor employer over employee.
 - **Yanez v. Plummer** (2013): in-house lawyer told employee he was his lawyer, but then impeached him in depo, leading to employee's termination.
 - “**Ethical walls**” can be used to separate attorney staff - but not if the conflict involves the city attorney, due to the city attorney’s power over staff (*San Francisco v. Cobra Solutions*).



Lessons

- City Attorneys must understand how ethical rules apply to in-house and government attorneys.
 - Who is the client under Rule 1.13
 - When an attorney-client relationship may arise between city attorney and city employees
 - Prosecutorial ethics
 - Interactions with opposing parties and the public
- Be alert for situations where government attorneys have heightened ethical obligations to serve interests of fairness and justice beyond simply acting as a zealous advocate.
- **Never compromise your integrity.**



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Attorney-Client Privilege (and Attorney Work Product): Waiver and Potential Pitfalls

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Overview

1. Attorney-client privilege
2. Attorney work product protection
3. Waiver



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Basics: Attorney-client privilege

- Established in the Evidence Code, Section 954
- Confidential communication between attorney and client
- Privilege belongs to client



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Basics: Attorney-client privilege

- Communication must further attorney-client relationship
- Dominant or primary purpose test



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Basics: Attorney work product

- Established in the Code of Civil Procedure, Section 2018.030
- Must also be confidential
- Privilege belongs to the attorney, not the client



Basics: Attorney work product

- Absolute work product – attorney's thoughts, impressions or legal theories
- Qualified work product – everything else
 - Motivated by fairness
 - “Do your own homework!”



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Basics: Tips and Thoughts

- Email signatures/disclaimers
- Marking emails as “privileged and confidential”
- Being cc’d on emails
- Snarky responses
- Explain to clients



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Investigations

- *Coito v. Superior Court*: work product protection for recorded witness interviews and lists of witnesses
- Witness interviews not automatically entitled to be absolute work product - determination must be made on a case-by-case basis (likely qualified)
- Witness lists also not entitled to either absolute or qualified work product – also case-by-case



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Waiver

- Generally the same principles for attorney-client privilege and attorney work product
- Express – intentional disclosure of privileged materials
 - Unique issues in local governmental law
- Implied – nuance



Waiver: Possible Consequences





Waiver: Possible Consequences

- CRPC 1.6 – Confidentiality
- CRPC 1.1 – Competence
- CRPC 1.4 – Communication with Clients /
CRPC 1.8.2 – Use of Current Client's
Information



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Express Waiver

- Generally results in communication-by-communication disclosure (not by subject matter)
- Strong protection in California
- *Rico v. Mitsubishi*: duty to return inadvertently disclosed documents



Implied Waiver

- Party asserting privilege is relying on a document to establish key facts (usually a defense) while simultaneously shielding from the other side
- Possibility of unfair advantage
- Examples
 - Defense of counsel
 - Legal malpractice
 - Employment discrimination: adequacy of investigation
 - Be careful what you ask for!



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Press Releases

- Few “bright lines”
- *In re Dayco Corp. Derivative Securities Litigation*: two-page press release which summarized the establishment of a special review committee, the retention of the law firm to conduct an investigation, and the investigation’s findings and conclusions
- *In re Veeco Instruments, Inc. Securities Litigation*: a press release and a letter from the defendant’s outside counsel to the SEC
- *In re Banc of California Securities Litigation*: disclosing findings made by the law firm in two press releases



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Press Releases – Tips and Thoughts

- Careful balance and risk assessment
- Judges are likely to be skeptical about broad disclosures
- VTA press release
 - Discussed the factual findings of the investigation and the investigator's conclusions
 - Investigation not relevant for defense or to establish key facts



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Public Records Requests

- *Ardon v. City of Los Angeles*: inadvertent release of privileged documents does not result in waiver
- Reliance on *Rico v. Mitsubishi*
- But what about pro pers?

A low-angle, perspective shot of a classical building facade featuring large, fluted columns and ornate carvings. The sky is blue with light clouds. The text is overlaid on the right side of the image.

Questions? Concerns? Discussion