

CONFLICT OF INTEREST – COUNTY
ATTORNEY – MULTIPLE
REPRESENTATION: REPRESENTING
BOARD OF SUPERVISORS ON
PETITION FOR REVIEW OF BOARD OF
ZONING APPEALS MATTER AND
ALSO REPRESENTING BOARD OF
ZONING APPEAL.

You have advised that the Board of Zoning Appeals (BZA) of a certain county granted a particular special use permit, the issuance of which the Board of Supervisors objected to and that the Board of Supervisors instructed you as county attorney to file petition with the circuit court seeking review of the BZA's action. You did not advise the BZA or otherwise participate in any way in the permitting process. However, you are concerned that a conflict may arise as you have, on occasion, represented the BZA before the circuit court on other matters (and will likely do so again in the future) and your employer, the Board of Supervisors, which you as county attorney would represent if you have not previously participated in the matters where there is discord with one of its agencies' rulings.

You wish to know whether a conflict of interest may exist if you continue to represent the county in its petition to seek review of the special use permit granted by the Board of Zoning Appeals. You believe that a conflict would not exist since you did not participate in the permitting process and since the BZA is itself a quasi-judicial body whose decisions are appealed. You allege further that the parties who are in actual conflict are the person who sought the special use permit and now seeks approval from the circuit court and those persons or entities including circuit court and those persons or entities including the Board of Supervisors who oppose the granting of the permit.

The Committee believes the appropriate and controlling rule is DR:5-105(C), which provides that a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each. Since you did not participate in the process of granting the special use permit, there is no substantially related representation that is materially adverse to a former representation under DR:5-105(D) and your statutory obligation to represent the Board of Supervisors would require you to take such action.

The Committee believes that if the Board of Zoning Appeals is an agency of the Board of Supervisors for the county, the two would not have differing interests. Also, given the statutory authority of the Board of Supervisors to request a review of the ruling of its agencies, it would only be appropriate for the county attorney to represent the Board of Supervisors in the petition or review, if he has not previously participated in the same when reviewed by the Board of Zoning Appeals.

Under the facts as you have presented them in the inquiry, the Committee would agree with your conclusions and would opine that it is ethically permissible for you as county attorney to continue representing the county and Board of Supervisors since you were not involved in the matter which gave rise to the current issue. In the view of the Committee, the current representation would not be adverse in any material respect to any prior representation of the Board Zoning Appeals.