



LEGAL ISSUES
RELATING TO COUNTY GOVERNMENT

Corporation Counsel: Attorney for the Entire County

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In the theme song for a classic 1984 movie, a question is posed: “When there’s something strange in your neighborhood, who you gonna call?” The answer, of course — “Ghostbusters!” — left little doubt as to what the responding team of paranormal investigators would do.

County government also has a “Who you gonna call?” position — but the title is far less self-explanatory or catchy for a theme song. Established in Section 59.42 of the Wisconsin Statutes, that role is the corporation counsel, the lawyer representing the county in non-criminal matters.¹

This article provides an overview of the corporation counsel position, including what the corporation counsel does, for whom the corporation counsel does it, and how the county can obtain additional legal support to accomplish the county’s goals and objectives.

► What does the corporation counsel do?

A corporation counsel’s duties are limited to civil matters.² In handling all civil legal matters for the county, a corporation counsel may give “legal opinions to the board and its committees” and interpret “the powers and duties of the board and county offices.”³

In practice, this means the corporation counsel has an exceptionally broad portfolio of responsibilities. For example, the corporation counsel is responsible for the prosecution of mental health commitments and the establishment of guardianships and protective placements. The corporation counsel is also responsible for representing the county in other civil litigation, which can

include tax foreclosures and bankruptcies.

Outside the courtroom, corporation counsel provides legal advice to the county board and the departments of the county. This may include drafting resolutions and ordinances, preparing documents for acquiring or selling real estate, negotiating contracts, and assisting in the resolution of employment matters. It is often said that there is no such thing as a “typical” day in the corporation counsel’s office.

► For whom does the corporation counsel provide legal services?

The corporation counsel provides legal services for the entire county.⁴ While this answer may appear straightforward at first, it can become more complicated in practice.

In the context of representing an entity, the American Bar Association notes: “An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents.”⁵ In other words, while the county may be responsible for plowing snow on a particular highway, it is not the county that plows the highway. People do that work. Without people, the county couldn’t do anything. However, that does not mean that the people allowing the county to accomplish its goals and objectives are, themselves, the corporation counsel’s clients.⁶

Additionally, while the corporation counsel represents the entire county, the corporation counsel **does not** represent the individual residents of the county. Put another way, a resident cannot obtain legal advice from the

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corporation counsel about their personal legal situation.

Understanding the corporation counsel's role as the attorney for the entire county is helpful to understanding the relevant ethical rules regarding confidentiality and conflicts of interest that govern a corporation counsel's conduct.

► The corporation counsel's duty of confidentiality

The idea that an attorney must keep certain information confidential is well known. In Wisconsin, the applicable ethical rule provides:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation.⁷ However, a lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.⁸

If, for example, a county administrator asked corporation counsel to investigate allegations of wrongdoing, interviews conducted by the corporation counsel with the county's officers and employees would be confidential under this rule.⁹ This same confidentiality provision would prohibit the corporation counsel from sharing with one employee the contents of another employee's interview about the alleged wrongdoing, unless sharing particular information was necessary to conduct the investigation.

While the corporation counsel represents the entire county, not every county officer or employee needs to know every fact the corporation counsel learns in providing legal

services to the county. At the same time, the corporation counsel could learn information during the course of their representation of the county that must be shared more broadly within the organization.

► Navigating conflict within the county

When providing legal services for the entire county, there will, of course, be situations in which one part of the county disagrees with another part of the county. For example, an elected constitutional officer, such as the sheriff, might disagree with the county board's proposed budget or a county board supervisor might disagree vehemently with another county board supervisor on a piece of legislation. Depending on the nature of the disagreement, the corporation counsel may have a conflict of interest.

As a legal matter, the corporation counsel has a conflict of interest if their representation of one client would be **directly adverse** to another client or there is a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to another client.¹⁰ There are, however, situations in which the corporation counsel may still represent a client when there is a conflict of interest.¹¹

In general, unless the county is engaged in active litigation against itself, the corporation counsel may represent both disagreeing elements.¹² While it may be ethically permissible, depending on the facts and circumstances of the disagreement, there can be practical limitations on representing "both sides" of an intra-county disagreement. Thankfully, the statutes recognize this difficult position in which corporation counsel may find themselves and provide an avenue for relief.

► Can the corporation counsel get help?

While the corporation counsel has a broad portfolio of responsibilities, they are not on their own. First, the county

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board may authorize one or more additional attorney positions within the office of the corporation counsel to assist the corporation counsel.¹³ Second, the county board may authorize hiring outside legal counsel “as the need arises.”¹⁴

While the corporation counsel can certainly be involved in discussions about how best to provide appropriate legal services for the county, the decision — including whether “the need arises” for outside legal counsel — ultimately rests with the county board. The attorney general has concluded that Wis. Stat. § 59.42(3) gives the county board the authority to authorize and approve contracts with outside legal counsel.¹⁵

There are a number of reasons a county board may decide to hire outside legal counsel to provide some legal services for the county, including bandwidth, expertise, the instructions of the county’s insurance company, and situations in which one part of the county is suing another part of the county.

► Conclusion

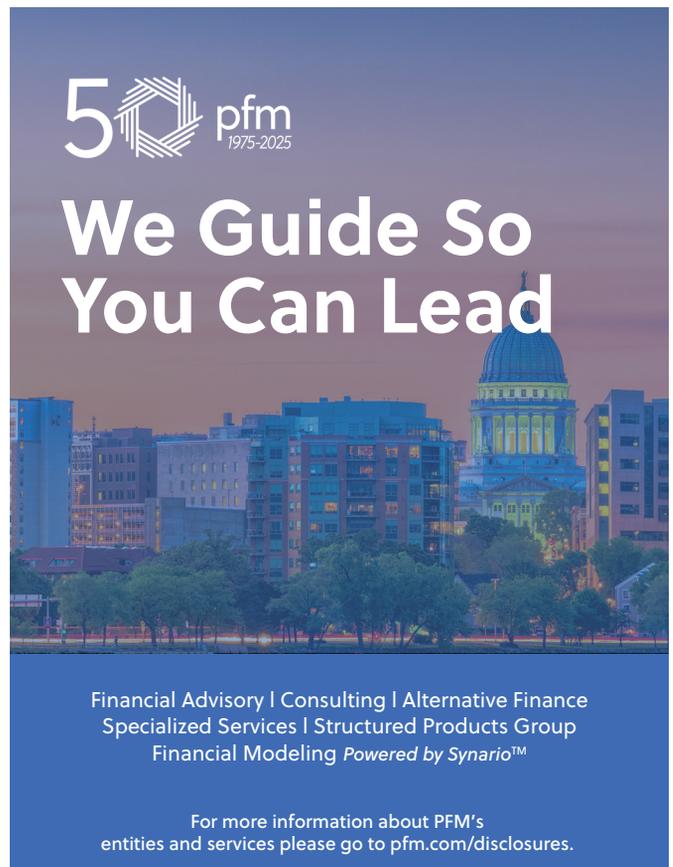
This article is only an overview of the corporation counsel position. Counties are encouraged to work with their corporation counsel to better understand both the legal and practical limitations on what activities they may undertake and for whom. Ultimately, corporation counsel must elevate the interests of their client — the county — above other interests. Determining how best to accomplish this is not always a simple task.

If you have any questions surrounding this article, please do not hesitate to contact the WCA or the authors. ■

Attolles Law, s.c. works on behalf of Wisconsin counties, school districts, and other public entities across the state of Wisconsin. Its president & CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for more than 20 years.

1. Criminal matters are the responsibility of the district attorney. See Wis. Stat. § 978.05(1).
2. Wis. Stat. § 59.42(1)(c), (2)(b).
3. The Milwaukee County corporation counsel also has the responsibility to review and sign “all contracts [involving Milwaukee County] to verify that the contracts comply with all statutes, rules, ordinances, and the county’s ethics policy.” Wis. Stat. § 59.42(2)(b)5.
4. In addition to representing the county as an entity, the corporation counsel represents the county board and any commissions, departments, committees, agencies, and officers of the county.
5. S.C.R. 20:1.13 (ABA Comment 1).

6. S.C.R. 20:1.13 (ABA Comment 2).
7. S.C.R. 20:1.6(a).
8. S.C.R. 20:1.6(b).
9. S.C.R. 20:1.13 (ABA Comment 2). To be clear, the county can waive this confidentiality. As a result, it would be possible for the facts gathered in the interviews with the corporation counsel to ultimately be made public.
10. S.C.R. 20:1.7(a).
11. S.C.R. 20:1.7(b). Even if there is a conflict of interest, “a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in a writing signed by the client.”
12. “[L]awyers under the supervision of [elected] officers [such as corporation counsel] may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients.” S.C.R. 20 Preamble: A Lawyer’s Responsibilities (18).
13. Wis. Stat. § 59.42(1)(c), (2)(a).
14. Wis. Stat. § 59.42(3); OAG-01-13 (April 9, 2013).
15. OAG-01-13 (April 9, 2013).



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