

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

MICHELE BRANT, as Madison County Auditor,	)	CASE NO. CVCV036143
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' REPLY IN
	)	SUPPORT OF MOTION TO
HEATHER STANCIL and JESSICA HOBBS, as members of the Madison County Board of Supervisors,	)	DISQUALIFY PLAINTIFF'S
	)	COUNSEL
Defendant.	)	

The Resistance does not withstand scrutiny. As a threshold matter, Mr. Swanson's clients—as defined by statute—are directly adverse to one another in this lawsuit. *See* Iowa R. Prof'l Conduct 32:1.7(a)(1). The Resistance calls this case a “unique scenario” but cites no authority allowing a county attorney to sue members of the county's board of supervisors on behalf of its county auditor.

More troubling—and despite his unequivocal statements to the contrary at the July 20 hearing—Mr. Swanson has received privileged communications regarding Ms. Brant's civil rights complaints, both before and after the Board retained outside counsel, and as recently as one week before filing this lawsuit. Mr. Swanson was the initial point of contact for Madison County on Ms. Brant's complaints. He continued to insist that the County's outside counsel communicate directly with Mr. Swanson, as county attorney, regarding Ms. Brant's case. That very same case, involving the very same civil rights complaints, now forms the basis for Ms. Brant's claims against the County. This is not a close call. The Court should disqualify the county attorney.

I. Mr. Swanson's clients are directly adverse to one another and therefore must be disqualified.

Under Rule 32:1.7(a)(1), a conflict of interest exists when “the representation of one client will be directly adverse to another client.” The Resistance seems to recognize that a county attorney represents both sides of this litigation as a matter of law. *See* Iowa Code § 331.756(6)–(7). The Resistance also acknowledges Mr. Swanson has advised (and will continue to advise) the Board when called upon. *See* Resistance at 4. Yet, for some unknown reason, the Resistance claims litigation between these current clients should not lead to the county attorney's disqualification. This is wrong.

According to the Resistance, any direct-adversity problem is solved because the Board retained outside counsel in August 2025. But retaining outside counsel does not extinguish the county attorney's ongoing statutory duty of loyalty to each Board member in her official capacity. Mr. Swanson's duty under § 331.756 runs with the office—not with any particular engagement. It cannot be waived by board resolution or severed by the appearance of separate counsel in a single proceeding. And there is *no* support that county attorneys should be treated any more “uniquely” than other government lawyers, such as attorneys in the state Attorney General's Office. *See City of Davenport v. Office of Auditor*, 28 N.W.3d 584, 591–92 & n.2 (Iowa 2025).

Authorities across the country have reached the same conclusion. The Arkansas Supreme Court unanimously recognized that “a prosecuting attorney is placed in an untenable position whenever, as here, he is required to represent county officials who have competing interests with respect to other county officials.” *McCuen*

v. Harris, 611 S.W.2d 503, 505 (Ark. 1981). There, the Arkansas Supreme Court ordered disqualification even where all parties had consented to the representation and no confidential information had been exchanged (circumstances far more favorable to the disqualified attorney than those presented here). *Id.*

The Supreme Court of Ohio Board of Commissioners on Grievances and Discipline reached the same result: “A county prosecuting attorney is prohibited by [Model] Rule 1.7(c)(2) from representing multiple statutory clients, such as two different public entities, in the *filing of a lawsuit* by one of the clients asserting a claim against the other.” Ohio Adv. Op. 2009-3 (Ohio Bd. Comm’ns Griev. Discip. June 12, 2009), 2009 WL 1764109, at *8 (emphasis in original). The remedy mirrors Iowa law: “When a controversy evolves into a legal dispute that must be resolved through the filing of a lawsuit by one county official or entity against the other, the county prosecutor should withdraw in that matter from the representation of either client and special counsel should be appointed.” *Id.* The rule is simple: once litigation is initiated between county officers, the county attorney can play no further part.

Tellingly, the Resistance concedes that Mr. Swanson “continues to answer questions for the Board when asked and would represent it if requested in other matters.” Resistance at 3. That concession is dispositive. An attorney who simultaneously answers legal questions for the Board and prosecutes claims against Board members in their official capacities is, by definition, directly adverse to a current client.

The Resistance insists the analysis “turns on the actual facts of representation and risk.” Resistance at 4. The actual facts are now in the record. According to declarations of both Defendants, and supported by written communications, Mr. Swanson has, on numerous occasions (and since outside counsel was retained in August 2025), provided legal advice to the Defendants and responded to legal inquiries on their behalf. *See* Decl. of Heather Stancil ¶ 4; Decl. of Jessica Hobbs ¶ 4. Unsurprisingly, Mr. Swanson has adamantly maintained throughout this same period that he continues to serve as the Madison County Attorney, which represents the Defendants as a matter of law. Decl. of Stancil ¶ 5; Decl. of Hobbs ¶ 5.

The Resistance also misreads *Stream v. Gordy*, 716 N.W.2d 187 (Iowa 2006), suggesting that case demonstrates a historical practice of county attorneys litigating against boards of supervisors. Resistance at 4. That is not what *Stream* stands for. The county attorney in that case filed suit against the board using retained private counsel, precisely because the county attorney recognized the conflict that required his own withdrawal from the matter. *See* 716 N.W.2d at 190. *Stream* does not validate Mr. Swanson’s conduct here; it illustrates what a county attorney should do when faced with this situation. The Iowa Supreme Court in *Stream* ultimately held the lawsuit improper because it lacked board authorization. *Id.* at 193. The case cuts entirely against the Resistance’s position.

Finally, the Resistance concedes that no written waivers were sought from either Defendant. Resistance at 5. The fact the county attorney did not even attempt to secure written waivers, given the clear conflict issue presented, is problematic.

Ultimately, though, Rule 32:1.7(b)(3) forecloses waiver entirely when the representation involves the assertion of a claim by one client against another in the same proceeding, regardless of the attorney's subjective view of the conflict's severity. *See* Rule 32:1.7 cmt. [23] (recognizing the rule "prohibit[s] representation of opposing parties in the same litigation, regardless of the clients' consent"). Written waivers were never obtained and could not cure the conflict even if they had been.

II. Mr. Swanson has privileged information about Ms. Brant's civil rights complaints by way of his role as Madison County Attorney.

Even if Mr. Swanson's clients were not directly adverse to one another (which they are), disqualification would still be required under Rule 32:1.7(a)(2). A concurrent conflict exists under that Rule when "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." This Rule, too, applies to government lawyers such as county attorneys. *See City of Davenport*, 28 N.W.3d at 591–92. To be clear, if the Court believes Mr. Swanson must be disqualified under Rule 32:1.7(a)(1), it need not reach the issue of whether disqualification is required under Rule 32:1.7(a)(2).

Once again, the Resistance argues the analysis turns on actual facts. Resistance at 4. Mr. Swanson is correct that the analysis under Rule 32:1.7(a)(2) turns on actual facts; but the facts require his disqualification for this reason, too. Defendants have now produced a declaration from the County's outside counsel defending against Ms. Brant's civil rights complaints, which confirms that disqualification is warranted. *See Declaration of Melissa Schilling*.

Once Michele Brant filed her first civil rights complaint in July 2025 (*See* Petition, Ex. 3), Madison County retained outside counsel to defend the claim. Decl. of Schilling ¶ 2. But County Attorney Swanson was the initial point of contact for outside counsel. *Id.* ¶ 3. For that reason, outside counsel had several privileged conversations and communications protected by the attorney–client privilege with Mr. Swanson regarding Ms. Brant’s case. *Id.* ¶ 4. Specifically, outside counsel and Mr. Swanson communicated by phone and email on August 7, 2025; by email on August 18, 2025; by email on November 19, 2025; by email on November 20, 2025; and by email on May 21, 2026. *Id.* ¶ 4. Outside counsel also included Mr. Swanson on at least four emails with the County’s IT vendor in August 2025. *Id.*

Those communications contained privileged information about the County’s defense of Ms. Brant’s civil rights complaints and revealed case strategy to Mr. Swanson that he would not be entitled to but for his role as the Madison County Attorney. *Id.* ¶ 5. In outside counsel’s opinion, the information learned by Mr. Swanson, and information he may continue to learn as the county attorney and a point of contact in that case, could be used to the County’s disadvantage in Ms. Brant’s case. *Id.* Because of the obvious privilege concerns at play, the Defendants have not attached the privileged communications to outside counsel’s sworn statements. Should the Court determine it needs to review those communications, the Defendants will provide them for the Court’s *in camera* review. *See id.* ¶ 7.

Mr. Swanson’s involvement in the civil rights defense is not a peripheral matter. Plaintiff’s entire theory of liability in this case is that the Defendants voted

on matters affecting the Auditor's office while maintaining a conflict of interest arising from Ms. Brant's civil rights complaints against them. The attorney prosecuting that theory cannot simultaneously hold privileged information obtained from the other side of those same complaints. That is not a speculative risk of material limitation. It is, again, a structural impossibility.

According to the Resistance, "The County Attorney is not representing the Board in this litigation, nor is the County Attorney representing the Board in the underlying Civil Rights complaints." Resistance at 2. These narrow disclaimers miss the point. The relevant question under Rule 32:1.7(a)(2) is not whether Mr. Swanson formally opined on a budget vote or was retained to defend Ms. Brant's complaints. It is whether Mr. Swanson's responsibilities to the Board materially limit his representation of the Auditor. They do. The conduct is especially egregious when—as recent as one week before filing this lawsuit—Mr. Swanson insisted that outside counsel communicate directly with him regarding Ms. Brant's case against the county. Decl. of Schilling ¶ 6.

An attorney who holds privileged communications from one side of a dispute cannot prosecute claims on the other side of that same dispute, regardless of whether he formally advised on a specific challenged vote. The limitation arises from what the attorney knows, not merely from what he formally recommended. That limitation was on full display at the July 20 hearing.

THE COURT: Do you have information that could be used to the Board's disadvantage in this case that you learned as their attorney?

MR. SWANSON: No.

Transcript of July 20 Hearing, 8:19–22 (emphasis added). That representation is contradicted by the facts, and by the opinion of outside counsel. *See* Decl. of Schilling ¶ 5 (“The information learned by Mr. Swanson could be used to the County’s disadvantage in Ms. Brant’s case.”). Disqualification is warranted and appropriate.

III. There is no authority requiring Madison County to bear the financial burden of Ms. Brant’s lawsuit.

Iowa law is clear that unauthorized litigation by a county official cannot be funded by the county. And the Resistance provides no legal basis to shift the cost of Ms. Brant’s legal representation to the taxpayers of Madison County. The Resistance appears to recognize this lawsuit was not approved by the County’s board of supervisors, nor did the board of supervisors approve the county attorney filing the lawsuit on the auditor’s behalf. The Resistance asks the Court for an “equitable arrangement” with no real suggestions, other than that the Judicial Branch should fund Ms. Brant’s lawsuit under § 331.759. Resistance at 6. But again, Ms. Brant did not follow the proper procedure by seeking the Board’s approval to file this lawsuit. *See Stream v. Gordy*, 716 N.W.2d 187, 192–93 (Iowa 2006). Nor has she formally requested the Board to approve legal costs resulting from this lawsuit. *See Smith v. Bd. of Supers.*, 320 N.W.2d 589, 593 (Iowa 1982). Thus, the Court has no authority to require Madison County to foot the bill for this plaintiff’s fees or costs. *Id.* (“If, as these parties argued to the court, there is a right of representation of county officers for action arising out of their official duties, the remedy would [first] be to request payment by the board of supervisors ...”).

IV. If Ms. Brant must obtain substitute counsel, the Court should lift the stay in the interim.

The Resistance now acknowledges this certiorari action relates to the Board's "April 28, 2026 budget vote." Resistance at 1. That is a valuable concession. Most importantly, it supports Defendants' motion to dismiss because in Iowa, certiorari does not lie to correct legislative acts of a board of supervisors, such as budget decisions. *See* D0010 at 3–6 (Defendants' Motion to Dismiss).

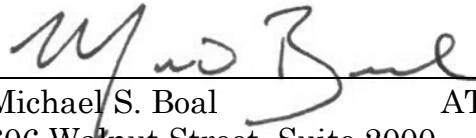
But Ms. Brant's concession also highlights the fact that the County's budget has already been partially stayed for over two months. *See* D0004. If the Court is inclined to disqualify Mr. Swanson, the Court should lift the stay previously entered on May 29, 2026. Extending the stay even further, during the search for new counsel for Ms. Brant and while new counsel gets up to speed, would further defer resolution of a matter that has already disrupted the County's budget administration.

Conclusion

Mr. Swanson must be disqualified from this litigation. The Court should direct Mr. Swanson to request withdrawal from representing Ms. Brant for cause, appoint alternate counsel under Iowa Code § 331.759, and confirm that Madison County has no obligation or responsibility to pay such substitute counsel. In the interim, the Court should lift the stay previously entered on May 29, 2026.

Respectfully submitted,

BELIN McCORMICK, P.C.



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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify on August 6, 2026, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following parties of record:

Stephen J. Swanson
Madison County Attorney
112 N. John Wayne Drive
PO Box 152
Winterset, IA 50273
sswanson@madisoncounty.iowa.gov

Signature: /s/ E. Strom

DECLARATION OF HEATHER STANCIL

I, Heather Stancil, declare as follows:

1. I am over the age of 18 and qualified to make this Declaration.
2. I am the chair of the Madison County Board of Supervisors and a named defendant in *Brant v. Stancil and Hobbs*, Madison County No. CVCV036143.
3. I attended the hearing set in that matter on July 20, 2026. At the hearing, and in response to direct questioning by the Court, Mr. Swanson acknowledged that the Board of Supervisors would be his client if they asked for his representation. Mr. Swanson's only qualification was that the Board hadn't really done that often since August 2025.
4. Since the Board of Supervisors retained outside counsel in August 2025, Mr. Swanson, in his role as the Madison County Attorney, has provided legal advice to me in my official capacity, responded to legal inquiries on my behalf, and taken other actions consistent with his role as legal counsel to the Board. These actions are documented in email communications dated November 19, 2025; March 16, 2026; March 31, 2026; April 4, 2026; May 1, 2026; and June 9, 2026.
5. Mr. Swanson has also remained adamant that he continues to serve as the Madison County Attorney. Mr. Swanson has never been formally removed as Madison County Attorney or replaced as legal counsel to the Board.
6. I have also been included on at least one privileged communication sent by Mr. Swanson, in his role as county attorney, dated August 7, 2025, and related to the civil rights complaint filed by Michele Brant.
7. Any relevant communications are available for the Court's *in camera* review, should the Court find it necessary.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.


Heather Stancil
8/5/26
Date

DECLARATION OF JESSICA HOBBS

I, Jessica Hobbs, declare as follows:

1. I am over the age of 18 and qualified to make this Declaration.
2. I am a member of the Madison County Board of Supervisors and a named defendant in *Brant v. Stancil and Hobbs*, Madison County No. CVCV036143.
3. I attended the hearing set in that matter on July 20, 2026. At the hearing, and in response to direct questioning by the Court, Mr. Swanson acknowledged that the Board of Supervisors would be his client if they asked for his representation. Mr. Swanson's only qualification was that the Board hadn't really done that often since August 2025.
4. Since the Board of Supervisors retained outside counsel in August 2025, Mr. Swanson, in his role as the Madison County Attorney, has provided legal advice to me in my official capacity, responded to legal inquiries on my behalf, and taken other actions consistent with his role as legal counsel to the Board. These actions are documented in email communications dated October 21, 2025; November 19, 2025; March 16, 2026; March 31, 2026; April 4, 2026; April 10, 2026; May 1, 2026; May 6, 2026; May 28, 2026; and June 9, 2026.
5. Mr. Swanson has also remained adamant that he continues to serve as the Madison County Attorney. Mr. Swanson has never been formally removed as Madison County Attorney or replaced as legal counsel to the Board.
6. I have also been included on at least one privileged communication sent by Mr. Swanson, in his role as county attorney, dated August 7, 2025, and related to the civil rights complaint filed by Michele Brant.
7. Any relevant communications are available for the Court's *in camera* review, should the Court find it necessary.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Jessica Hobbs
Jessica Hobbs (Aug 6, 2026 07:57:22 CDT)

Jessica Hobbs
Aug 6, 2026

Date

Hobbs Declaration

Final Audit Report

2026-08-06

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"Hobbs Declaration" History

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DECLARATION OF MELISSA SCHILLING

I, Melissa Schilling, declare as follows:

1. I am an attorney with the law firm Dickinson, Bradshaw, Fowler & Hagen, P.C.
2. On July 30, 2025, I was retained to represent Madison County before the Iowa Office of Civil Rights regarding the civil rights complaint filed by Michele Brant. I have continued to represent Madison County regarding Ms. Brant's initial complaint as well as a second civil rights complaint.
3. County Attorney Stephen Swanson was my initial point of contact for Madison County for this case.
4. Since July 30, 2025, I have had several communications protected by the attorney-client privilege with Mr. Swanson regarding the case. More specifically, we communicated by phone and email on August 7, 2025; by email on August 18, 2025; by email on November 19, 2025; by email on November 20, 2025; and by email on May 21, 2026. I also included Mr. Swanson on at least four emails with the County's IT vendor in August 2025.
5. My communications with Mr. Swanson contain privileged information about the County's defense of Ms. Brant's civil rights complaints and reveal case strategy to Mr. Swanson that he would not be entitled to but for his role as the Madison County Attorney. The information learned by Mr. Swanson, and that he may continue to learn as the County Attorney and a point of contact in this case, could be used to the County's disadvantage in Ms. Brant's case.
6. Madison County has never removed Mr. Swanson as a point of contact in this case. Mr. Swanson has continued to insist that I communicate directly with him regarding the case, as the Madison County Attorney, as recently as one week before filing the lawsuit *Brant v. Stancil and Hobbs*, Madison County Case No. CVCV036143.
7. The relevant communications are available for the Court's *in camera* review, should the Court find it necessary.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Melissa Schilling

Melissa Schilling (Aug 5, 2026 14:15:36 CDT)

Melissa Schilling

Aug 5, 2026

Date

Schilling Declaration

Final Audit Report

2026-08-05

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-  Signer mschilling@dickinsonbradshaw.com entered name at signing as Melissa Schilling
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