

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

Madison County Board of Supervisors Plaintiff, Vs. Michelle Brant, in her official capacity, and Madison County Auditor Defendant.	CASE No. CVCV036154 Brief in Resistance to Motion to Disqualify
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Comes now Defendant Michele Brant, in her official capacity as Madison County Auditor, by and through Madison County Attorney Stephen J. Swanson, and submits this brief in resistance to the Plaintiff's Motion to Disqualify Plaintiff's Counsel.

I. Introduction

This improperly filed mandamus action asserts that the Madison County Auditor Michelle Brant due to her refusal to make payment of outstanding claims without being allowed to first review said claims for their legality under her authority in Iowa Code 331.502(37) which states the Auditor shall "Have the authority to audit, at the auditor's discretion, the financial condition and transactions of all county funds and accounts for compliance with state and federal law."

Under Iowa Code §661.8 Mandamus may only be brought by a private party or the State through the County Attorney. In this case the matter was brought by the Board, without conferring with or discussions with the County Attorney or his office and therefore is improperly filed. There was at no point a conflict check to see if the County Attorney was willing or able to represent the Board in this matter, or any other member of the County Attorney's office. Any conflict viewed by the Board is mitigated and released by their actions of bypassing the County Attorney's office in order to file this action.

In bringing this action, the Madison County BOS, with no input from one third of the equal board, have determined that they have the authority to undermine and usurp the legally

granted authority of both the Auditor, with her ability to audit transactions and the County under Iowa Code 331.502(37), which was created in 2013 in response to the *Miller v. Lynn County Board of Supervisors* No. 3-911 / 13-0278 Iowa, 2013 and codified the Auditor's ability to Audit expenses by the County and the County Attorney's duty to bring litigation and exclusive authority to bring Mandamus actions on behalf of the Government.

Defendants move to disqualify County Attorney Swanson under Iowa Rule of Professional Conduct 32:1:7, asserting a non-waivable concurrent conflict because the County Attorney has statutory duties to the Board and its members. They further request appointment of substitute counsel under Iowa Code §331.759 while asserting Madison County need not pay for such counsel.

“Disqualification is a drastic remedy applied only when necessary to protect the integrity of proceedings and public trust. Courts accommodate a litigant's right to counsel of choice whenever possible.” *Liquor Bike, LLC v. Iowa District Ct.* 959 N.W. 2d 693,696 (Iowa)2021);*NuStar Farms, LLC v. Zylstra*, 880 N.W. 2d 478, 482 (Iowa 2016). On the unique facts of this case, particularly the Board's longstanding retention of separate outside counsel and its repeated assertions of conflict which have largely excluded the County Attorney's office from Board matters, no disqualifying concurrent conflict exists. The Motion should be denied. Alternatively if the Court disqualifies counsel, it should appoint substitute counsel under Iowa Code §331.759 with directions ensuring appropriate public funding consistent with the official capacity nature of the dispute and the public interest in resolving conflicts among elected officials.

II. No Concurrent Conflict of Interest

Iowa Rule of Professional Conduct 31:1:7(a) provides that a lawyer shall not represent a client if representation involves a concurrent conflict of interest. A concurrent conflict exists if (1) the representation of one client will be directly adverse to another client or (2) 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, a former client, a third person or by a personal interest of the lawyer. Consent is unavailable when the representation involves the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before the tribunal. Iowa Rule Professional Conduct 32:1.7(b)(3)

The County Attorney's duties include "commencing, prosecuting, and defending all actions and proceedings in which a county officer in the officer's official capacity, or the county, is interested or a party, and giving advice to the Board and other county officers when requested. Iowa Code §331.756(6)-(7). These duties do not create an automatic, perpetual, non-waivable conflict whenever one elected county officer challenges the official acts of others.

The Board retained separate outside counsel (Attorney Michael Boal) by majority vote in August 2025 pursuant to Iowa Code §331.755(2). That outside counsel represents Plaintiffs in this litigation. This litigation does not involve any matter involving any alleged harm to the Board, rather the alleged harm is to the outside counsel who is not represented by the County Attorney. The Board of Supervisors is not an aggrieved party in this action, and this action does not seek to remedy any lack of ministerial duty to the Board. The Board is not an adverse party in this action to the Auditor and thus, the practical concurrent representation required by Rule 32:1.7 is absent.

The Board has invoked the language in Iowa Code §331.754 and due to the County Attorney representing the Auditor in the instant matter, has availed themselves of the remedy found in Iowa Code §331.754 as found in *Polk County Conf. Bd. V. Sarcone*, 516 N.W.2d 817, 821 (Iowa 1994), which in part found that a conflict can constitute a disability that would trigger the remedy under Iowa Code §331.754, which is what has occurred here. There is nothing in the premise of that law that would imply that the County Attorney is likewise barred from being

involved in the case for the other side due to the conflict, only that the Board has the ability to appoint their own counsel if that situation were to arise as they have done in this matter.

The party moving for disqualification bears the burden of proving the grounds for disqualification. *Liquor Bike, LLC* 959 N.W. 2d at 696. “Because of the potential for abuse by opposing counsel, disqualification motions should be subject to particular scrutiny.” *Id.* (internal quotations omitted). “The disqualification of Government counsel is a drastic measure and a court should hesitate to impose it except where necessary.” *U.S. v. Bolden*, 353 F. 3d 870, 879 (7th Cir. 2003). In this case the Board has failed to show a concurrent conflict of interest. The Board used outside counsel to file this Mandamus with no input from the County Attorney and at no time has the County Attorney been involved in any discussions with outside counsel including the Board. At no time has Swanson advised the Board on this matter. The Board has failed to show a conflict of interest, let alone meet the “particular scrutiny” required for the “drastic measure” of disqualifying the County Attorney, and the Court must therefore deny Stancil and Hobbs’ motion.

For approximately a year, Plaintiffs have repeatedly asserted conflicts with the Auditor’s office and the County Attorney’s office, largely excluding the County Attorney’s office from Board litigation and certain meetings. As recently as Tuesday, August 25, 2026, Jessica Hobbs referred in a public meeting to her inability to work with the County attorney due to her perceived issues with him. Under these circumstances, requiring the County attorney to stand aside whenever this Board acts outside of their official duties to attack another elected official action would effectively insulate Board majorities from legal accountability by county officers, because the Board controls funding for outside counsel. It would have the additional effect of allowing the Board to use the power of the purse to punish officers with whom they politically disagree. Attorney General opinions have long recognized inter-officer disputes may require one side to obtain private counsel. *See 1982 Op. Atty. Gen.* no 82-8-6 (if a dispute arose between the

board of supervisors and a conservation board, the conservation board would be required to obtain private legal counsel). That principle supports continued representation of the Auditor by the County Attorney where the Board has already secured independent counsel.

Any residual risk under Rule 32:1.7(a)(2) is speculative. The County Attorney continues to answer questions for the Board when asked and would represent it if requested in other matters. That general advisory role does not create a significant risk of material limitation, in this specific litigation where Plaintiffs are independently represented by counsel of their own choosing. Government lawyers are subject to Rule 32:1.7, but the analysis turns on the actual facts of representation and risk, not an abstract identity of “all county officers” as concurrent clients in every dispute *City of Davenport v. Office of Auditor*, 28 N.W. 3d 584, 591-92 &n2 (Iowa 2025).

The case law history shown in cases such as *Stream v. Gordy* 716 N.W. 2d 187, *Smith v. Board of Sup'rs of Des Moines County* 320 N.W. 2d 589 (1982) demonstrate instances where the County Attorney represented either the board of supervisors against other elected county offices or along with other county offices filed suit against the board of supervisors. There is no restriction found that bars the county attorney from bringing suit on behalf of one elected branch of government against the other, which is why Iowa Code §331.754 addresses what the remedy is if a county attorney is disqualified due to a disability. The principle advanced by the motion filed by Defendants would solely allow the County Attorney to represent the Board against other county officers, but not represent other county officers against the Board. There is no logic to the Plaintiffs' argument as the County Attorney is an independent, elected position not subject to the direct management of the Board of Supervisors Iowa Code §§331.301(2), 331.903 & 331.904 and is required to “Commence, prosecute, and defend all actions and proceedings in which a county officer, in the officer's official capacity, or the county is an interested party.” Iowa Code §331.756.

No written waivers were sought because none were necessary under these facts. The Board's retention of outside counsel and its own assertions of conflict eliminate the concurrent adversity that would otherwise trigger the non-consentable prohibition of Rule 32:1.7(b)(3).

III. If Disqualification is Ordered, the Court should Appoint Counsel Under Iowa Code §331.759 and Address Compensation Fairly.

Iowa Code §331.754 addresses disability of the county attorney (a conflict can constitute disability, *Polk County Conf. Bd. V. Sarcone*, 516 N.W.2d 817, 821 (Iowa 1994)). Section 331.759 authorizes the Court to appoint counsel if the county attorney withdraws for cause. Court appointment is the appropriate mechanism here; it avoids the structural conflict inherent in requiring an adverse Board majority to select counsel for the Auditor challenging the majority's actions.

On compensation *Stream v. Gordy*, 716 N.W. 2d 187 (Iowa 2006), held that county officials who retain outside counsel without Board authorization cannot compel the county to pay the resulting fees. That case is distinguished from the instant matter as it involved unauthorized prior retention in a challenge to Board compensation decisions. A court-appointed counsel under §331.759 has a different standing. The Court has the authority to structure the appointment and address the payment in light of the official-capacity nature of the claims, the public interest in orderly resolution of disputes between elected officers and principles of fairness. A blanket declaration that the County has no payment obligation and that the cost of this matter should be shifted to the Auditor personally, would effectively deter legitimate official-capacity challenges by elected officials whose statutory counsel is conflicted out by the very Board majority whose actions are at issue. Defendant respectfully requests that any appointment include the appropriate provision for payment from public funds or another equitable arrangement.

IV. Conclusion

For the reasons stated above and those advanced at the August 24, 2026 hearing, Defendant respectfully requests that the Court deny Plaintiff's motion to Disqualify Defendant's Counsel and permit Madison County Attorney Stephen J. Swanson to continue representing the Defendant in her official capacity. In the alternative, should the Court grant the motion, Defendant requests that the Court appoint substitute counsel pursuant to Iowa Code §331.759 and enter appropriate orders regarding compensation that recognize the official-capacity character of this dispute and the public interest involved.

Respectfully Submitted,



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