

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

MADISON COUNTY BOARD OF SUPERVISORS, Plaintiff, v. MICHELE BRANT, in her official capacity as MADISON COUNTY AUDITOR, Defendant.	Case No. CVCV036154 REPLY IN SUPPORT OF MOTION TO DISQUALIFY DEFENDANT’S COUNSEL
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The Resistance does not withstand scrutiny, especially after the district court’s ruling on near-identical issues in *Michele Brant v. Heather Stancil & Jessica Hobbs*, Madison County No. CVCV036143, D0022. 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). No authority, from any jurisdiction, permits a county attorney to represent a party directly adverse to a county board of supervisors in litigation. The Court should disqualify the county attorney.

I. Mr. Swanson must be disqualified because his clients are directly adverse to one another.

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.” Citing the same caselaw as in the last briefing on disqualification, the Resistance seems to understand that a county attorney represents both sides of this litigation as a matter of law. *See* Iowa Code § 331.756(6)–(7). “The County Attorney,” the Resistance argues, “continues to answer questions for the Board when asked and would represent it if requested in other matters.” Resistance at 5. But again, without citing any relevant authority, the

Resistance claims that litigation between these current clients should not lead to the county attorney's disqualification. The district court already rejected that argument in *Brant v. Stancil & Hobbs*. It should reach the same conclusion here.

The county attorney's duty of loyalty to the Board is not absolved by the Board retaining outside counsel. Mr. Swanson's duty under § 331.756 runs with the office—not with any particular engagement. The duty of loyalty is a mandate under the Iowa Rules of Professional Conduct; it cannot be waived by board resolution. And the Resistance still cites *no* authority 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).

The district court's August 14 ruling disqualifying the county attorney in the *Brant* case is consistent with authorities from across the country. 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’nrs 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 or its board, the county attorney can play no further part.

The Resistance does not substantively engage with any of these authorities. It does not raise any unique or different issues than those rejected by the district court in the *Brant* case. It again 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 5. As previously briefed, the county attorney in *Stream* 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. The case (still) cuts entirely against the Resistance’s position.

In the *Brant* case, the district court concluded:

As the Madison County Attorney, Stephen Swanson is required by statute to represent Madison County and its officers in their official capacities. The Madison County Attorney’s lawsuit (on behalf of Brant) against Madison County Supervisors Stancil and Hobbs is, *of course*,

directly adverse to the county and to its board (in the majority). A concurrent conflict of interest exists.

Brant v. Stancil & Hobbs, D0022 at 3 (emphasis added). Here, the county attorney is not directly adverse to a *working majority* of the Board—the county attorney is directly adverse *to the Board itself*. Rule 32:1.7(a)(1) doesn’t allow the county attorney’s involvement.¹

II. Madison County should not be required to pay for successor counsel.

Assuming the Court disqualifies the county attorney from this litigation, it should appoint an attorney to represent Ms. Brant as a defendant in this matter. *See* Iowa Code § 331.759 (allowing the Court to appoint counsel if the county attorney withdraws from representation for cause). The Court should provide Ms. Brant time to nominate successor counsel, as was done in the *Brant* case.

Under the circumstances, the Court should direct that legal costs to represent Ms. Brant in this matter should be paid from the court expense fund, not the county’s general fund. *See id.* The crux of this mandamus action is to require a county auditor to do her job—i.e., pay out claims—once the Board takes a recorded vote directing the auditor to issue a pay warrant. Iowa Code § 331.506(1)(a). Although the Board recognizes that Ms. Brant is positioned as the defendant in this matter, the litigation only arose because the auditor refused to comply with the Board’s lawful directive. County funds should not be used to pay legal costs defending the same conduct that

¹ Even after the district court’s August 14 ruling that disqualification was required in *Brant*, the Resistance brazenly maintains “[n]o written waivers [of a conflict] were sought because none were necessary under these facts.” Resistance at 6.

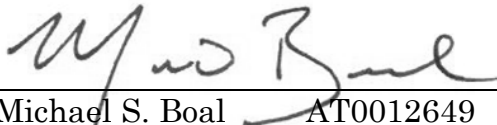
were directly contrary to the Board's stated directives. The same logic led the Iowa Supreme Court to unanimously order the costs of a successful mandamus action to be paid by the defendant public officials, in their personal capacities. *See Welch v. Borland*, 66 N.W.2d 866, 870 (Iowa 1954) (affirming an order of costs, taxed personally, because "[t]his action having been made necessary by the failure and refusal of the Defendants to perform their duty toward said district").

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 successor counsel under Iowa Code § 331.759, and confirm that successor counsel will be paid through the court expense fund.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on August 28, 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:

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