

IN THE IOWA DISTRICT COURT IN AND FOR MADISON COUNTY

MADISON COUNTY BOARD OF
SUPERVISORS,

Plaintiff,

vs.

MICHELE BRANT, in her official
capacity as Madison County Auditor,

Defendant.

No. CVCV036154

RULING ON MOTION TO
DISQUALIFY

This matter came before the Court on August 24, 2026. Attorney Michael Boal represented the Madison County Board of Supervisors. County Attorney Stephen Swanson represented Michele Brant in her official capacity as Madison County Auditor. Having reviewed the record and considered the arguments of counsel, the Court hereby enters the following ruling.

BACKGROUND

The Madison County Board of Supervisors has petitioned the Court for an order directing the Madison County Auditor to fulfill her duty under the law to pay certain claims approved by the board.¹ The claims are for legal service requested by, provided to, and approved by the board. The legal services were procured under Iowa Code section 331.755(2).

The board argues that the necessity of this action will cause it to incur more attorney fees and costs, which should be paid by Brant personally. And the board wants the Court to enjoin the auditor from interfering with its representation by outside counsel. Madison County Attorney Swanson represents Brant in her capacity as Madison County Auditor.² As Madison County's attorney, Swanson declared the board's petition "asinine" and moved for its dismissal.³

Much earlier, in October 2025, Swanson subpoenaed the board's attorney-client files maintained by outside counsel. The district court quashed the subpoena after concluding it would improperly invade the attorney-client privilege held by the board and enshrined in Iowa law.⁴ Later, the district court denied Swanson's request to reconsider its ruling noting that "issuance of the State's grossly overly broad subpoena" would be "wholly inappropriate."⁵

¹ D0002 & D0004.

² D0007.

³ D0008.

⁴ See Madison Co. No. IFIF000191, D0009.

⁵ Id., D0058.

Now, the board seeks to disqualify County Attorney Swanson from representing the auditor in this litigation. They argue that the county attorney represents Madison County, which is governed by its board of supervisors. Therefore, the board maintains, the county attorney cannot be involved in litigation that pits his clients against one another.

Brant filed no resistance to the disqualification motion. But at the hearing, Attorney Swanson said he resisted the motion. Three facts are undisputed. First, this action was brought and defended by Madison County officials. Second, the board does not consent to Swanson's representation of the auditor. Third, Swanson did not ask the auditor for her written consent acknowledging the potential that his responsibilities to her will be materially limited by his responsibilities to the board (and/or county).

ANALYSIS

"The right of a party to choose his or her own attorney is important, but it must be balanced against the need to maintain 'the highest ethical standards' that will preserve the public's trust in the bar and in the integrity of the court system."⁶ Disqualification is, at times, required to preserve and to protect public confidence in the integrity of the court system.⁷

The party moving to disqualify counsel bears the burden of establishing the necessity for such a strong measure.⁸ Evaluation of the case for disqualification starts with the Iowa Rules of Professional Conduct.⁹ In relevant part, the rules state:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest 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, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), 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;

⁶ *Bottoms v. Stapleton*, 706 N.W.2d 411, 415 (Iowa 2005).

⁷ *NuStar Farms, LLC v. Zylstra*, 880 N.W.2d 478, 482 (Iowa 2016).

⁸ *See Id.* at 418.

⁹ *Id.*

- (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 writing.¹⁰

As the Madison County Attorney, Stephen Swanson is required by statute to represent Madison County and its officers in their official capacities.¹¹ But here, he's chosen to defend Brant in this action commenced against her by the board. The auditor's position is directly adverse to the board's (and to the county's—in the majority). Attorney Swanson has aligned himself with one of his masters and against the other. A concurrent conflict of interest exists.¹²

As county attorney, Swanson must give advice or a written opinion to the board, when requested by an officer, upon any matters in which the county is interested.¹³ He has pledged to fulfill this statutory obligation.¹⁴ Yet if the board quizzes him about information helpful to it and harmful to Brant, his representation of the board will be materially limited by his duty of loyalty to Brant. At the hearing, County Attorney Swanson said, “if I learned information that would be helpful to [the board] in this particular writ of mandamus, I wouldn't inform them because I represent the auditor.” When asked if he would not inform his client, Madison County, of information helpful to the county, Attorney Swanson replied “correct.”

The division of Attorney Swanson's loyalties isn't just hypothetical. Believing that the board (at least in the majority) had isolated him, Attorney Swanson used the power of subpoena to attempt to invade the board's attorney-client files maintained by outside counsel (hired under statutory authority). Even though the district court quashed the subpoena in order to protect the board's privileged communications, Attorney Swanson asked the court to reconsider the ruling.

County Attorney Swanson's zealous advocacy for Brant creates a significant risk that his representation of the board, as required by statute, will be materially limited by his responsibilities to Brant. There's a significant risk that County Attorney Swanson cannot keep his pledge made at the disqualification hearing in Madison County matter CVCV036143 that his “loyalties lie to the county, what is in the best interest of the county.” Another concurrent conflict of interest exists.¹⁵

¹⁰ Iowa R. of Prof'l Conduct 32:1.7.

¹¹ Iowa Code § 331.756(6).

¹² Iowa R. of Prof'l Conduct 32:1.7(a)(1).

¹³ Iowa Code § 331.756(7).

¹⁴ D0020, Def.'s Br. at 4 ¶ 2 (08/26/2026).

¹⁵ Iowa R. of Prof'l Conduct 32:1.7(a)(2).

Because a concurrent conflict of interest exists, County Attorney Swanson must meet all the requirements of Rule 32:1.7(b) to represent Brant in this case. He cannot. He never sought a waiver from either the board or from Brant. The board clearly has not provided written consent. The Madison County Attorney may not represent the auditor in this action.

Attorney Swanson insists that there is no concurrent conflict of interest because he never represented the board regarding this matter. Nevertheless, he “continues to answer questions for the Board when asked and would represent it if requested in other matters.”¹⁶ The Rules of Professional Conduct are clear on this point: “Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.”¹⁷

To put it succinctly, County Attorney Swanson will either be loyal to Brant, or he will be loyal to the Madison County Board of Supervisors. He cannot be loyal to both under these circumstances. As a lawyer and member of the legal profession, Stephen Swanson is an officer of the legal system having special responsibility for the quality of justice.¹⁸ His continued representation of Brant (in this action) and the board would erode the public's trust in the bar and in the integrity of the court system. Disqualification is required to preserve and to protect public confidence in the court system. County Attorney Swanson must withdraw from representing Brant (nor can he propose representing Madison County or its board in this case).¹⁹

The next question is how must Brant proceed. The Iowa Judicial Branch's Office of Professional Regulation does not list Brant among the roster of attorneys licensed to practice in Iowa's courts. She may not represent the interests of the Madison County Auditor in court. Non-lawyers may not represent other people or entities; by enforcing this rule, our courts aim to protect the judicial system and the public from “ineptitude and delay at the hands of persons who are unskilled as well as unlicensed in the practice of law.”²⁰

A conflict of interest is considered a disability for the purposes of Iowa Code section 331.754.²¹ However, that section only provides that in such a situation, “the board of supervisors

¹⁶ D0020, Def.'s Br. at 4 (08/26/2026).

¹⁷ Iowa R. of Prof'l Conduct 32:1.7 cmt. 6.

¹⁸ Iowa R. of Prof'l Conduct Preamble (1).

¹⁹ Iowa R. of Prof'l Conduct 32:1.16(a)(1).

²⁰ *Hawkeye Bank & Tr., Nat'l Ass'n v. Baugh*, 463 N.W.2d 22, 24 (Iowa 1990).

²¹ *Polk Cnty. Conf. Bd. v. Sarcone*, 516 N.W.2d 817, 821 (Iowa 1994).

may appoint an attorney to act as county attorney.”²² Appropriately, the board recognizes that it should not choose its opponent’s lawyer.

Here, Brant claims she’s exercising the auditor’s discretion to audit the financial condition and transactions of all county funds and accounts for compliance with state and federal law.²³ If this remains genuinely true (despite nearly nine months of delay), then denying any funds to Brant would be the rough equivalent of the board choosing opposing counsel. Brant would have no choice but to pay for legal representation. Forcing government employees to spend their own money when acting in their official capacity would fly in the face of the notion that government employees are agents of their employer when they are acting in their official capacity.²⁴

Fortunately, Iowa Code section 331.759 provides a solution. It states:

At any stage of legal proceedings in which a county attorney is authorized to represent a county officer acting in the officer's official capacity, the county attorney may apply to the court for permission to withdraw from representation of the officer for cause. If the court allows the county attorney to withdraw, it shall appoint an attorney to represent the county officer. The costs of representing a county officer acting in the officer's official capacity shall be paid from the court expense fund or the general fund of the county.

County Attorney Swanson asks that the Court take this route if he is disqualified from representing Brant in her official capacity. The Court accepts this request as an application to withdraw for cause. The Court will allow his withdrawal and appoint new counsel for Brant.

The board maintains that Madison County will incur attorney fees and costs to prosecute this action.²⁵ If a mandamus action is made necessary by the failure and refusal of a public official to perform her duty, the costs of an action may be taxed to the public official personally.²⁶ This is the board’s request.²⁷ The Court should reserve ruling on the final assessment of the costs of this action, including Madison County’s obligation to pay fees and costs billed by outside counsel.

²² Iowa Code § 331.754(1) (emphasis added).

²³ Motion to Dismiss (D0008); see also Iowa Code § 331.502(36).

²⁴ See, e.g., *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978) (nt. 55 - “official-capacity suits” are a “way of pleading an action against an entity of which an officer is an agent”).

²⁵ D0002 & D0004 ¶ 34.

²⁶ *Welch v. Borland*, 66 N.W. 866, 870 (Iowa 1954).

²⁷ D0002 & D0004 ¶ 35.

RULING

IT IS HEREBY ORDERED that, due to a conflict of interest, Madison County Attorney Stephen Swanson is disqualified and withdrawn from representing Madison County Auditor Michele Brant in her official capacity in this case.

IT IS FURTHER ORDERED that no later than 1:30 p.m. on September 14, 2026, Michele Brant shall be prepared to nominate successor counsel, who is licensed, willing, and able to represent her in her official capacity in this matter. Under Iowa Code section 331.759, the reasonable and necessary cost of representing Michele Brant in her official capacity as Madison County Auditor shall be paid initially from the general fund of Madison County.

IT IS FURTHER ORDERED that ruling is reserved on the question of whether the costs of this action, including Madison County's obligation to pay fees and costs billed by outside counsel, should be taxed to Michele Brant personally. The fees and costs for any attorney engaged by Michele Brant to represent her in her non-official capacity shall be borne by Michele Brant personally.



State of Iowa Courts

Case Number
CVCV036154
Type:

Case Title
MADISON COUNTY BOS V MICHELE BRANT
OTHER ORDER

So Ordered

Patrick W. Greenwood, District Court Judge,
Fifth Judicial District of Iowa

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