

Ethical representation of the local government client: building and maintaining public trust

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Texas state bar files professional misconduct lawsuit against Ken Paxton for attempt to overturn 2020 presidential elections

Giuliani, suspended in N.Y., faces attorney ethics probe in D.C.



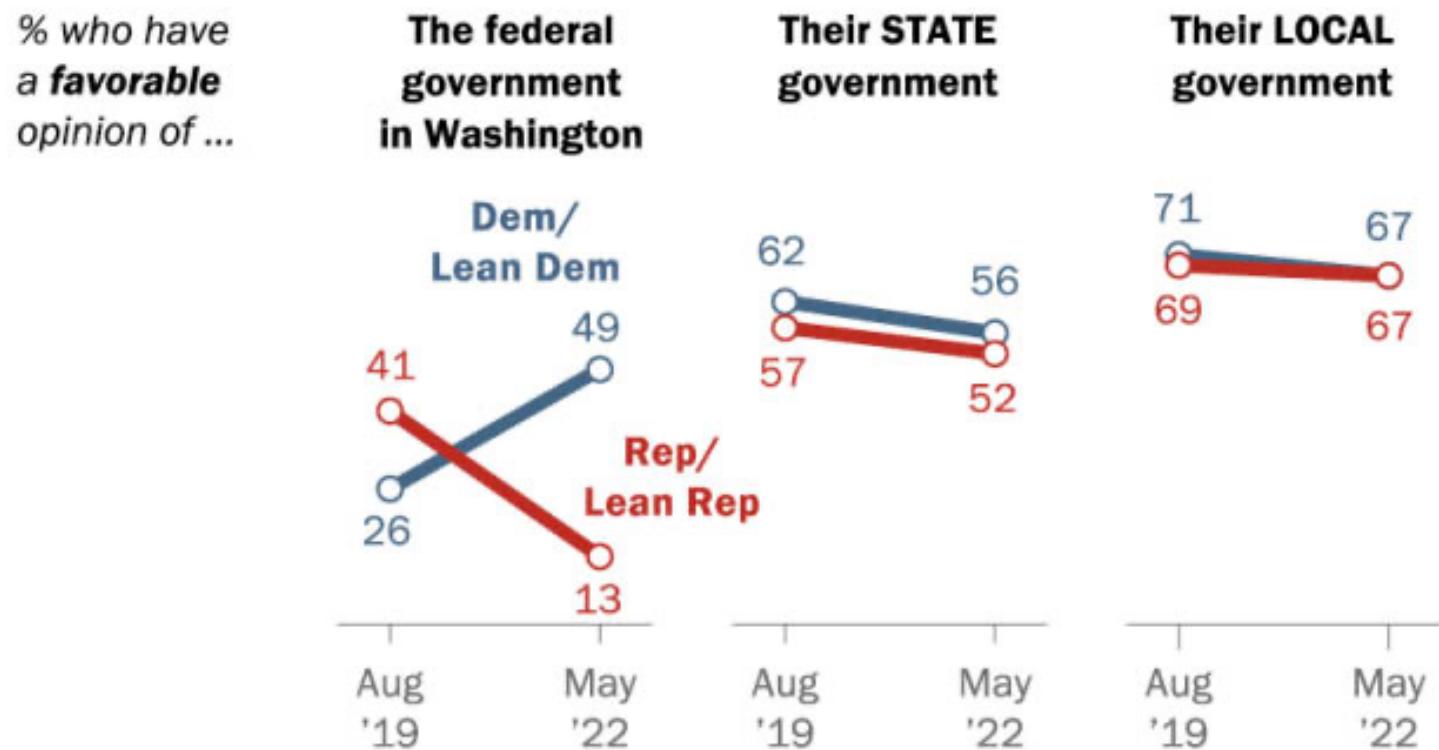
REUTERS®

Former Person County DA convicted in wife-hiring scheme now facing bribery charges



North Carolina AG in legal bind amid probe over 2020 TV ad

2022 PEW RESEARCH CENTER STUDY

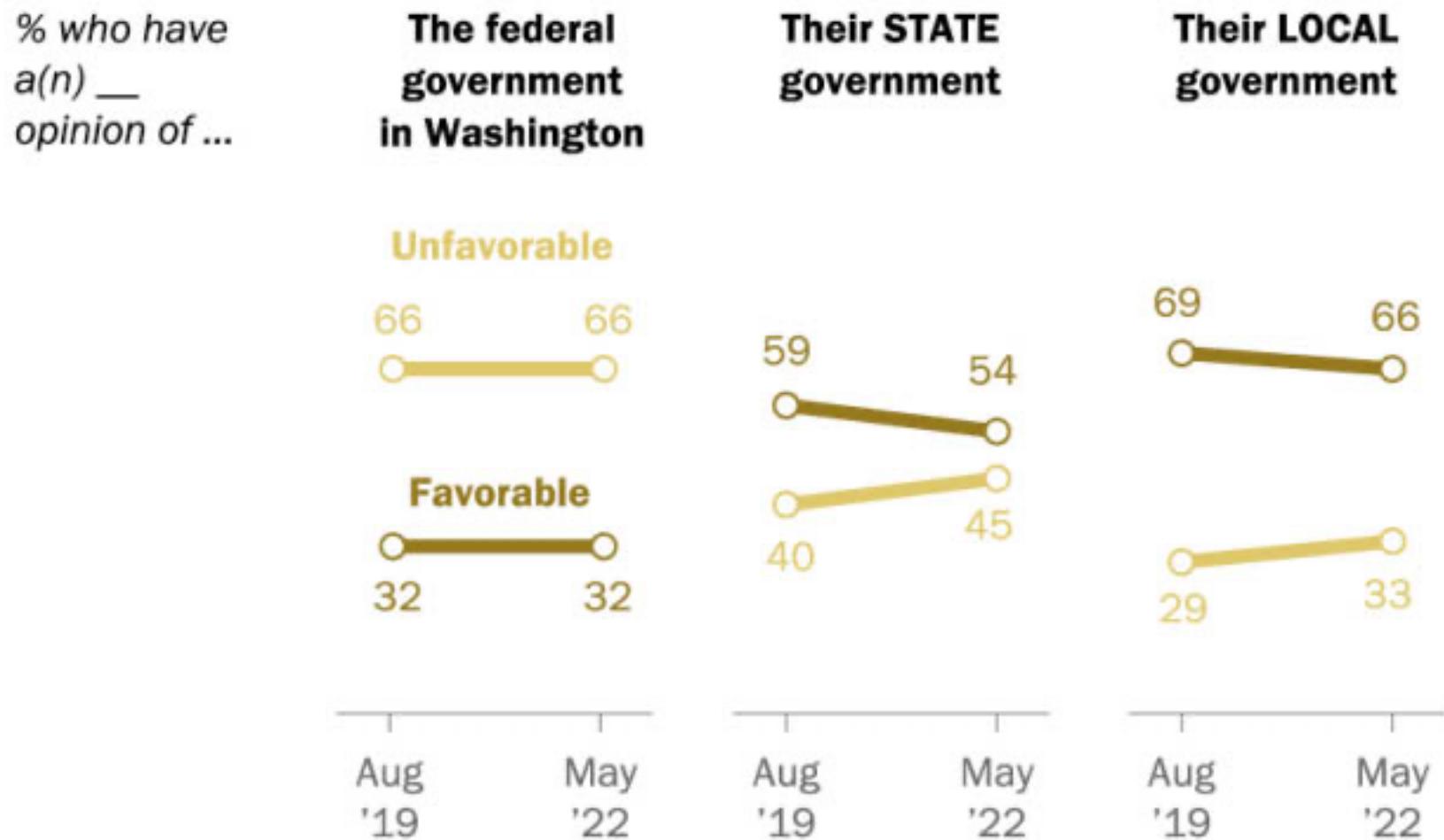


Source: Survey of U.S. adults conducted April 25-May 1, 2022.

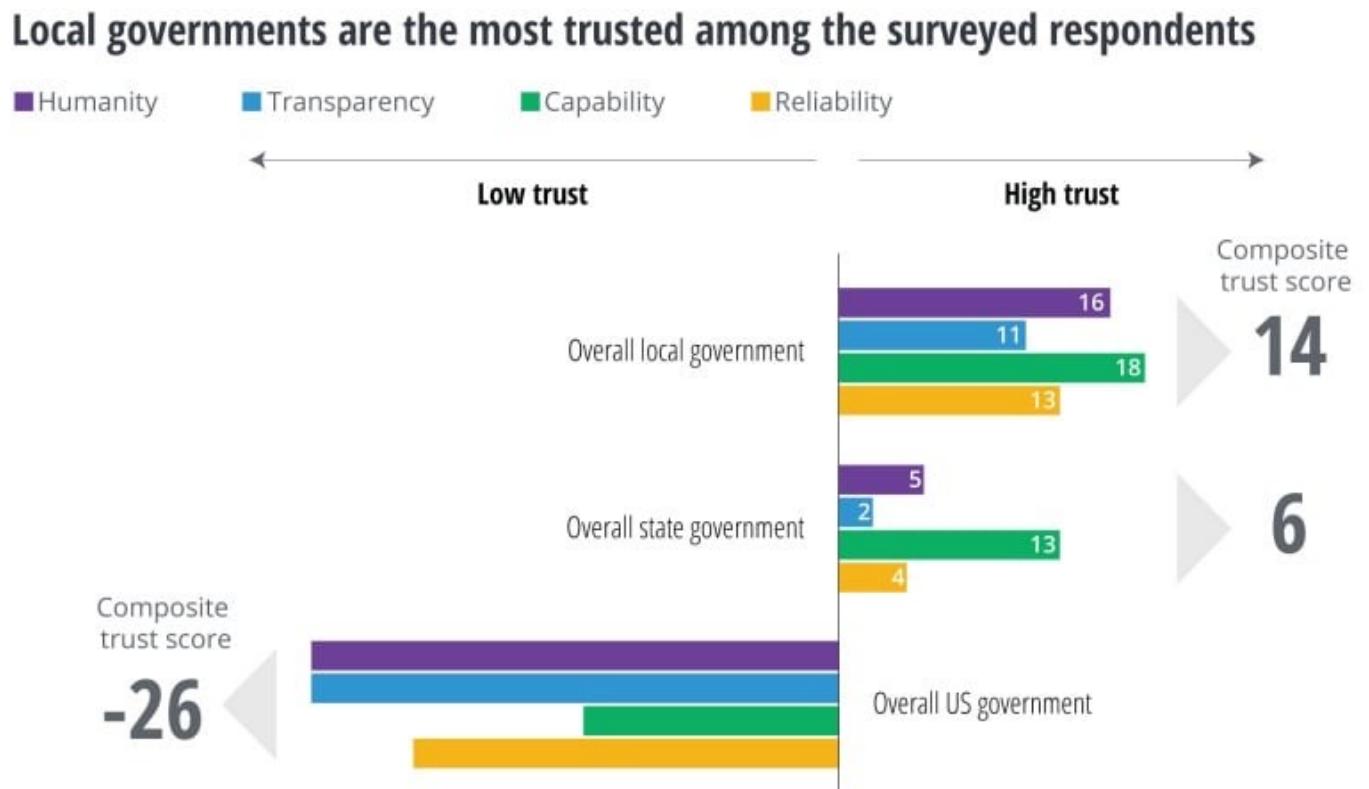
PEW RESEARCH CENTER

2022
Pew
Research
Center
Study

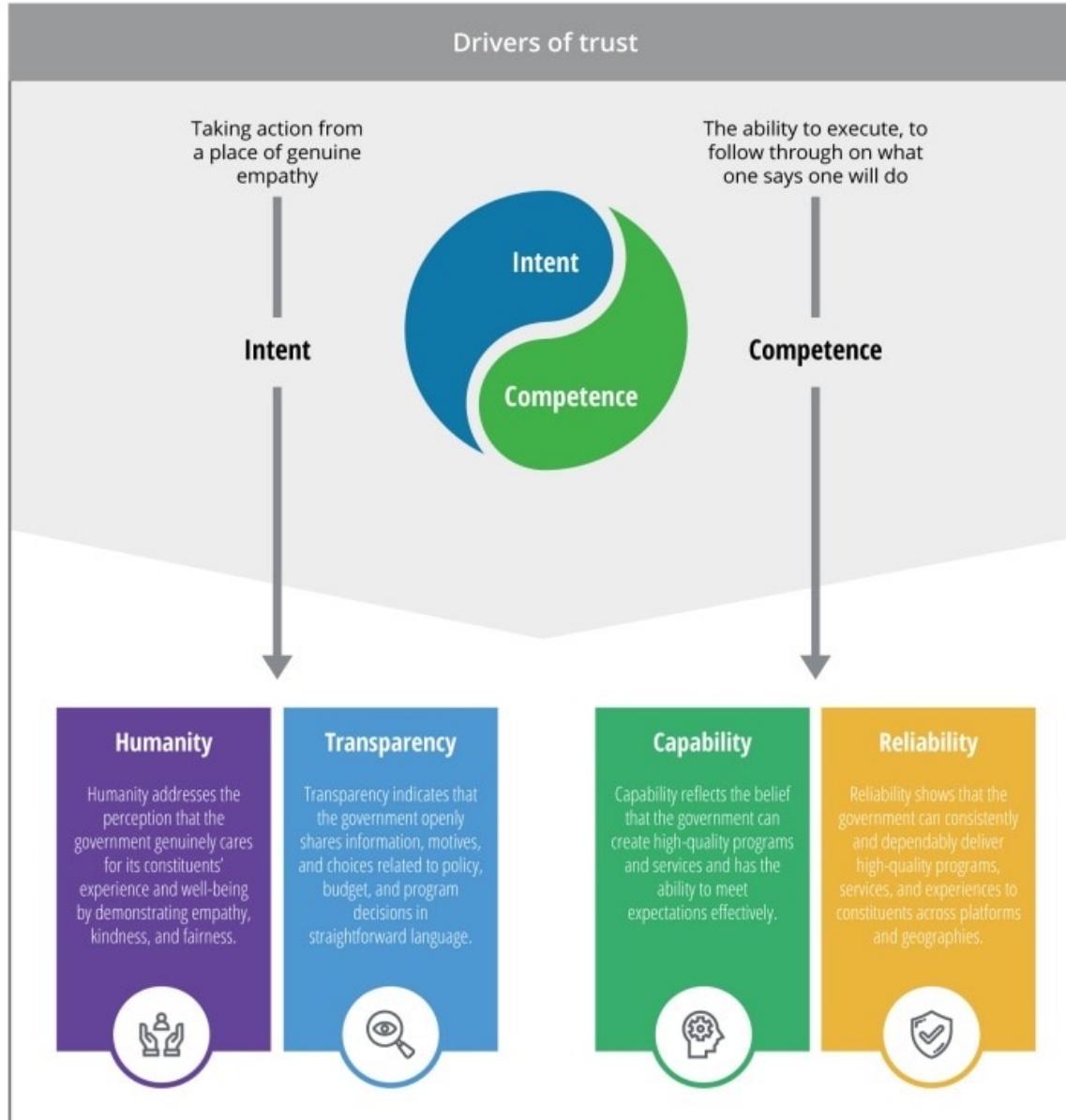
Views of state, local governments slightly less favorable than in 2019



2021 DELOITTE SURVEY – TRUST IN GOVERNMENT



What drives organizational trust?



Source: Based on Deloitte TrustID framework taken from William D. Eggers et al., *Rebuilding trust in government: Four signals that can help improve citizen trust and engagement*, Deloitte Insights, March 9, 2021.

“County” as client



The inhabitants of each county are a body politic and corporate under the name specified in the act creating the county....

NCGS §153A-11

Who is the client?

Rule 1.13: An attorney for an organization, including a government organization, has a duty to act “in the best interest of the organization.”

What does this mean in practice?

“Defining the identity of the client may be more difficult in the government setting and is a matter beyond the scope of these rules.” – comment 9

Practically
speaking....

The county acts through its “duly authorized constituents” (BOCC, elected officials, county employees, citizens).

NC RPC, Rule 1.13 (a).

The governing board (BOCC) is the highest authority that can act on behalf of the county.

NCGS §153A-12.

County DSS Attorneys

UNC SOG bulletin:

*Ethical Dilemmas in Client
Representation for DSS Attorneys in NC*

Kristi Nickodem, Assistant Prof of Public
Law and Government

[https://www.sog.unc.edu/blogs/coates-
canons/new-sog-bulletin-ethical-
dilemmas-client-representation-dss-
attorneys-north-carolina](https://www.sog.unc.edu/blogs/coates-canons/new-sog-bulletin-ethical-dilemmas-client-representation-dss-attorneys-north-carolina)

Preamble: The Attorney's role as a “representative of clients”



Advisor

Inform client of legal rights, obligations, and practical implications



Advocate

Zealously assert the client's position – within the rules of the adversary system



Negotiator

Seek an advantageous result for the client - consistent with requirement of honest dealing with others

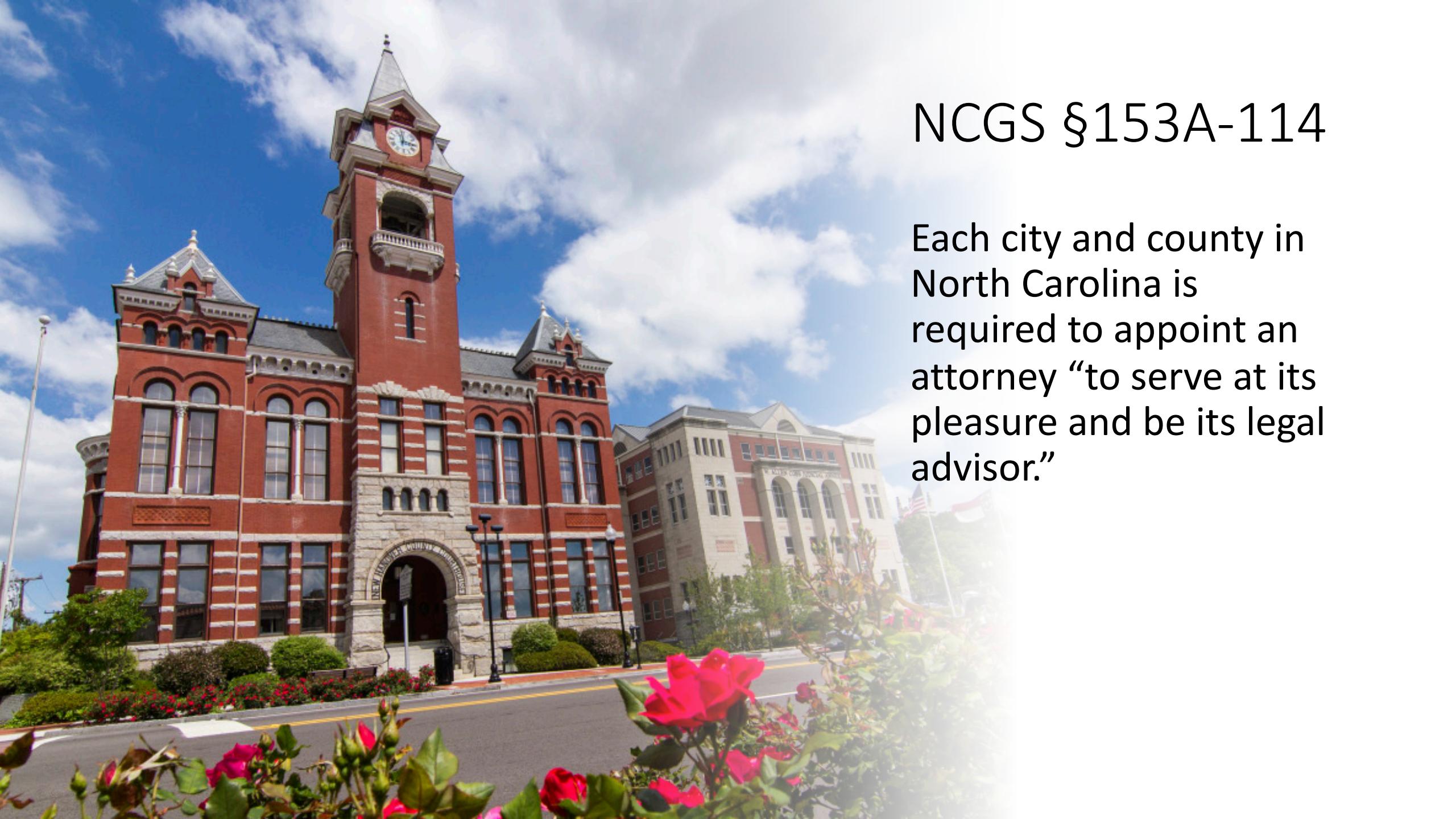


Evaluator

Examine the client's legal affairs and report about them to client and others

What duties are owed to
the client?





NCGS §153A-114

Each city and county in North Carolina is required to appoint an attorney “to serve at its pleasure and be its legal advisor.”

“Advisor”

In representing a client, a lawyer shall exercise independent, professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law, but also to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

Rule 2.1, NC RPC



The “conscience” of the county?

.... in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances.

NC RPC 1.13, comment 9

What's your client's mission? How does this play into how you counsel them?



Orange County Mission Statement

Orange County exists to provide governmental services requested by our residents or mandated by the State of North Carolina. To provide these quality services efficiently, we must:

- Serve the Residents of Orange County - Our Residents Come First
- Depend on the energy, skills and dedication of all our employees and volunteers
- Treat all our Residents and all our Employees with fairness, respect, and understanding

How does your department communicate with the voting public?

Forsyth County | North Carolina

Mission:

To protect and preserve the interests of Forsyth County Government through the initiation and defense of legal proceedings, and the successful conclusion of these proceedings, to provide accurate legal advice upon which decisions can be made by the Board and County Departments.



Mission:

To render fair and impartial legal advice to the various departments of Chatham County government, and to assist in creating a responsive, open, accessible and socially just interaction with all citizens.



County Attorney

Department Function:

The County Attorney is appointed by the Commissioners to advise the Board, the County Manager and department heads on all legal matters related to the operation of County government.

The County Attorney's office is responsible for seeing to it that affairs and actions of Durham County are conducted in accordance with federal, state and local laws. Legal opinions are provided on all laws, contracts, leases, deeds and other legal documents.

Local governing boards: code of ethics

Each County Governing Board must have a code of ethics that addresses (at least), each of the following:

- The need to obey all applicable laws regarding official actions taken as a board member.
- The need to uphold the integrity and independence of the board member's office.
- The need to avoid impropriety in the exercise of the board member's official duties.
- The need to faithfully perform the duties of the office.
- The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records. (NCGS §160A-86)



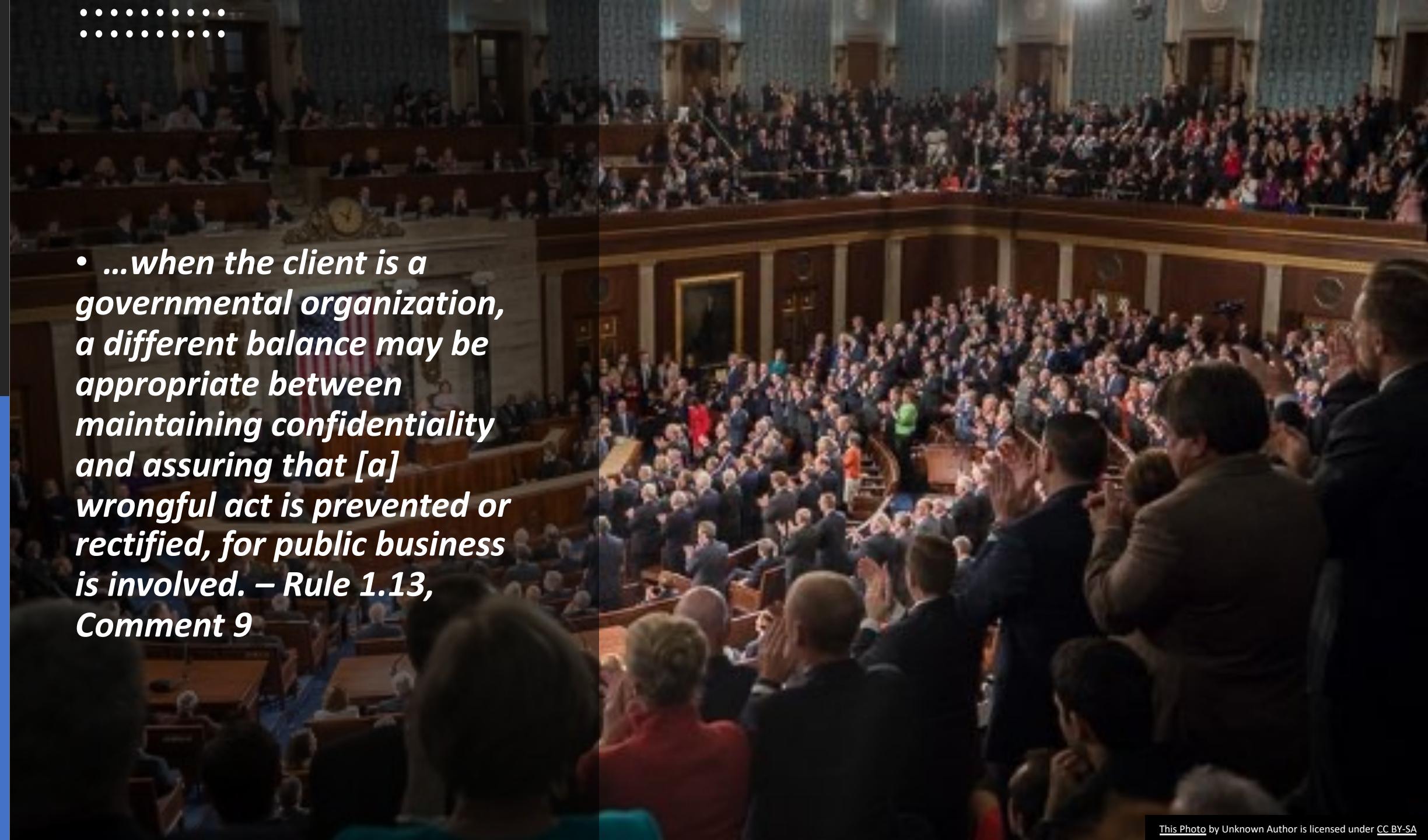
Confidentiality –
What does this look like for the
public sector attorney?

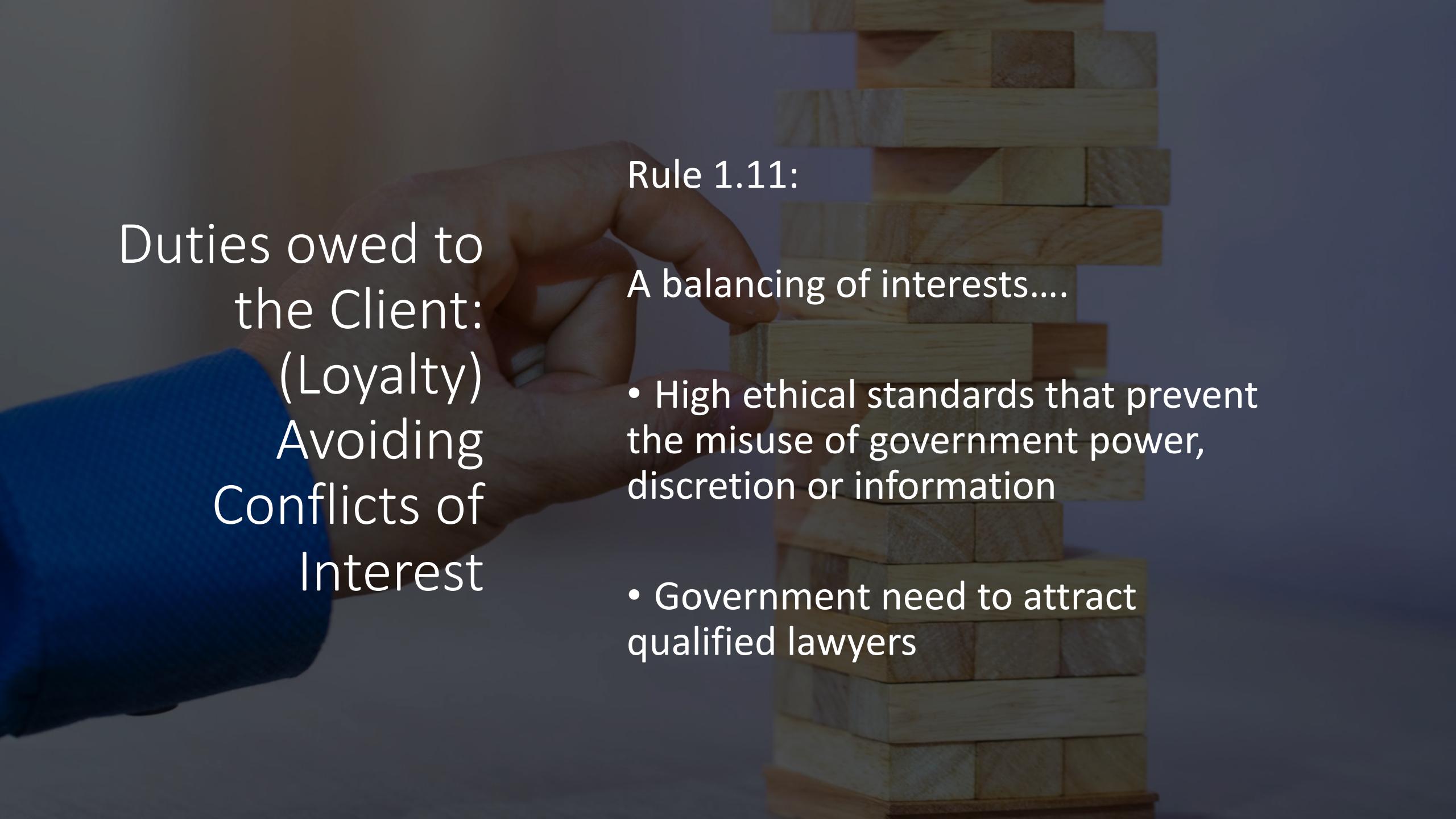
“Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules.” Rule 1.6, Comment 13.

i.e. – be aware of open records and open meetings laws.



- *...when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that [a] wrongful act is prevented or rectified, for public business is involved. – Rule 1.13, Comment 9*





Duties owed to the Client: (Loyalty) Avoiding Conflicts of Interest

Rule 1.11:

A balancing of interests....

- High ethical standards that prevent the misuse of government power, discretion or information
- Government need to attract qualified lawyers

Creating a Culture of Professional Behavior

A “Self-Regulating Profession”

Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement.

- Preamble, Section 14

Managing attorneys have a responsibility to make “reasonable efforts to ensure that ... the organization has in effect measures giving reasonable assurance that all lawyers in the firm or the organization conform to the Rules of Professional Conduct.”

- Rule 5.1

What if the client
doesn't take our advice?



Who calls the shots?

Rule 1.2 Objectives (client) vs.
Means (attorney)

“Professionalism”
considerations built into NC
Rules

County Corporate structure
– means less decision-making authority resides in county attorney than some government attorneys



However, some circumstances require the attorney to step into the decision-making arena out of duty to client.



Reporting Up

Is one of the constituents violating a legal obligation to the county?

Is there a violation of law that might be imputed to the county? *public's understanding of and rule of law and the justice system because a constitutional democracy depend on and support to maintain their*

Is there a substantial likelihood of injury to the county as a result of this behavior?

If so, the lawyer's duty is to report up through the county leadership hierarchy unless she believes it's not necessary in the county's best interest to do so. NC RPC, Rule 1.13 (b)

CPR 154

- Because the town attorney owes allegiance to the town and not to particular officials of the town, he must disclose to any inquiring member of the town's board of commissioners the subject of a town business meeting involving town officials and other interested persons despite contrary instructions from the mayor.

Reporting Out

If after reporting up to the highest authority, the highest authority insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may reveal such information outside the organization to the extent permitted by Rule 1.6 and may resign in accordance with Rule 1.16.

NC RPC 1.13 (c)



Conflicts between constituents and the county

Advise the individual that there is a conflict
Explain the attorney's role and identity of client
Advise individual that they may want to get their own attorney

NC RPC 1.13, Comment 10

Rule 4.3 dealing with pro se litigants may also apply here....

Must not give legal advice (other than to get an attorney)

Or give impression that the lawyer is disinterested



Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers.

Preamble, §10