ETHICS – NAVIGATING CONFLICTS OF INTEREST IN MUNICIPAL SECURITIES TRANSACTIONS

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This panel will provide a practical discussion of conflicts of interest including: what constitutes a conflict, a conflict be waived, and what the process is of waiving a conflict of interest. The panel will also discuss the benefits of an engagement letter and what should be included in an engagement letter. Additionally, the panel will review the rules around conflicts of interest and discuss some of the questions around conflicts in the context of the municipal bond transaction such as serving in multiple roles on the same transaction and obtaining waivers. Finally, the panel will review court cases affecting bond counsel and their practice.

I. INTRODUCTION

Every practice area has its own challenges arising from actual, perceived, or potential conflicts of interest. Attorneys practicing in the municipal finance industry often face challenging questions about conflicts of interest, including but not limited to, when conflicts arise, how they are addressed, whether they may be cured and how does conflicts impact the issuer and/or bond transaction. Many bond attorneys represent the same issuer and underwriting clients so making sure that all parties involved understand what capacity the bond counsel is serving in will have a significant impact on the bond transaction.

This panel is intended to highlight some of the challenges to the bond industry relating to conflicts of interest, provide best practices as to conflicts of interest, both in identification and waivers, and explore issues surrounding the lingering question about who, exactly, is the client of bond counsel.

This panel will explore examples of bond counsel conflicts of interest based on disputes with issuers of municipal debt. This panel will also explore some of the court decisions that concluded that the bond counsel should be disqualified and some lessons to be learned.

Bond attorneys must be familiar with the rules of professional conduct applicable in the jurisdictions in which they practice and with applicable federal, state, and local laws (including securities laws, tax laws, and constitutional and statutory provisions relevant to the particular bond issue) and those rules, standards, and guidelines promulgated by various industry groups and self-regulatory organizations, such as the Municipal Securities Rulemaking Board. To the extent bond lawyers practice in different states with differing rules, it is generally suggested that bond counsel comply with the stricter rules of a particular jurisdiction.

II. THE MODEL RULES, MODEL ENGAGEMENT LETTERS AND OTHER RESOURCES

After promulgation of the Model Rules of Professional Conduct (adopted by the American Bar Association in 1983, as amended the "Model Rules"), the Committee on Professional Responsibility of NABL prepared *Function and Professional Responsibilities of Bond Counsel* ("Function"). Function reviews the historic and modern role of Bond Counsel and focuses on select Model Rules to highlight the special role and function of bond counsel. Function is currently being revised.

The Model Engagement Letter, published by NABL (1998) the "Engagement Letter Committee" was formed to revise the Model Engagement Letters to incorporate the concepts and principles set forth in Function.

As discussed in Function, the Model Rules strongly suggest that the terms of the engagement be in writing. While each law firm may have its own internal rules and suggestions

regarding the practice of delivering or signing engagement letters, there are general benefits which derive from the written process for both parties.

The *Model Bond Opinion Report* of NABL (2003) "stated that the Securities and Exchange Commission has asserted that "information concerning financial and business relationships and arrangements among the parties involved in the issuance of municipal securities may be critical to any evaluation of any offering." This assertion suggests that, in the view of the Securities and Exchange Commission, in certain cases the relationship of bond counsel to other parties, or assumption by bond counsel of other roles, may be material and therefore require disclosure. See 1994 Interpretive Release—Primary Offering Disclosure—Areas Where Improvement is Needed—Conflicts of Interest and Other Relationships or Practices. See also GFOA Guidelines, Section XII. Opinion Report_v51.DOC (nabl.org)

Fundamentals of Municipal Bond Law, published by NABL (2007),

Disclosure Guidelines for State and Local Government Securities, published by GFOA (1991),

Disclosure Handbook for Municipal Securities, prepared by NFMA (1990),

Disclosure Roles of Counsel in State and Local Government Securities Offerings, Third Edition, published by ABA (2009),

The Function and Professional Responsibilities of Bond Counsel, 2011 third Edition, published by NABL (referred to in this outline as "*Function*"),

Model Bond Opinion Report, published by NABL (2003) and *Model Engagement Letters*, published by NABL (1998).

III. SCOPE OF ENGAGEMENT

"Both Function and Model Engagement Letters describe the scope of services to be performed by bond counsel, but those services may vary from state to state and transaction to transaction. The engagement letter or contract gives bond counsel the opportunity to state clearly the limitations of their legal services and the scope of each opinion to be rendered. The services to be rendered include (at least) those which are necessary to enable bond counsel to render the legal opinion regarding the validity and binding effect of the obligations, the source of payment and security for the obligations, and the federal (and state, if applicable) income tax treatment of interest on the obligations.

Limiting the scope of bond counsel's services is permitted under Model Rule 1.2(c) provided the client gives "informed consent" after consultation with the client and the limitation is reasonable under the circumstances. The Model Rules 1.0 includes a definition for informed consent and provides that lawyers must communicate "adequate information and explanation about the material risks and reasonably available alternatives to the proposed course of conduct."

Based on the foregoing, bond counsel must clearly explain their role to a client and do their best to make sure other involved parties understand what the role of bond counsel is, or *is not*, in relationship to all other parties and to the transaction. In addition, bond counsel must also be prepared to act with loyalty on behalf of their investment banking clients when they are representing them as underwriter's counsel. The inclusion of other tasks for bond practitioners on many deals, such as counsel to the bond insurer, counsel to the trustee or paying agent, and counsel to the letter of credit bank, makes the bond counsel's job that much more difficult.

IV. IDENTIFY YOUR CLIENT

A. The historical view that bond counsel served as "counsel to the transaction" is no longer generally accepted among NABL lawyers, but vestiges of this perspective remain in certain segments of the industry. "Even if bond counsel serves in more than one role in a particular transaction, e.g., bond counsel and issuer's counsel, bond counsel and conduit borrower's counsel, bond counsel and disclosure counsel, bond counsel may have only one client. In many cases, however, bond counsel will have different clients when serving in more than one role, e.g., bond counsel and underwriter's counsel. The applicable rules regarding conflicts of interest must be reviewed when representing multiple clients in the same transaction or different transactions." *See* the discussion of Model Rule 1.7 ("Conflict of Interest: Current Clients")" See Functions.

B. The Model Rules assume that if a lawyer renders professional services in a transaction, at least one party to the transaction is a client of that lawyer who is either entitled to such services, or entitled to not have the lawyer render such services to another party in the transaction without the client's consent.

C. Certain duties may be owed to non-clients, *e.g.*, bondholders and others in the transaction. These duties, to the extent they exist, arise primarily from common law concepts of agency, representation and reliance, and from statutory rules, both civil and criminal, relating to securities transaction. *See* Rule 2.3 of the Model Rules on duties to third-party recipients of opinions. While some government officials or institutional purchasers continue to assert that bond counsel represents the bondholders, this concept is not compatible with the Model Rules.

D. By identifying a client, bond counsel can deal appropriately under the Model Rules with situations involving loyalty, confidentiality, privilege, conflict, communication, and consent.

E. Particularly in conduit financings for public agencies (*e.g.,* when a joint powers authority issues for one of its members) or private entities (*e.g.,* exempt facilities, industrial development bonds, or multifamily housing issues), bond counsel fees may be paid by someone other than the issuer. This does not necessarily make the second party a client of bond counsel's. The engagement letter is a good opportunity to spell this out. Likewise, the payment by an issuer of the fees of underwriter's counsel will not create an attorney-client relationship between the issuer and such counsel. This situation is often resolved in language in the opinion rendered by underwriter's counsel.

F. In reliance letters or opinions to parties to the transaction (such as supplemental opinions to the underwriter), bond counsel will want to note that it has not acted as the addressee's legal counsel and has not entered into an attorney-client relationship with the addressee.

V. CONFLICTS OF INTEREST – CURRENT CLIENTS

Very few law firms engaged in the practice of municipal finance represent only one client at a time. The larger the firm, the more complex is the process whereby Bond Counsel can ascertain whether the firm as a whole has a conflict of interest in a matter. It is also an oddity of our practice that bond counsel often regards the entire "finance team" as working towards a common goal, a view that can reduce sensitivity to actual, business or perceived conflicts of interest.

A. Before establishing a new attorney/client relationship, the Model Rules require bond counsel to evaluate whether they can represent adequately the interests of the client, without compromising duties to existing or former clients. Bond counsel should complete a thorough conflicts check to evaluate whether the proposed representation of the issuer presents no conflict, "business" or "political" conflicts that are only generally adverse and do not require consent, or a current or potential conflict requiring informed consent.

B. The subject of conflicts is fact-specific.

C. In general, a breach of the Model Rules may give rise to disciplinary action, but is not *per se* malpractice, or a breach of a contractual obligation to a client. In describing a possible conflict to, or seeking consent from, a potential client, care should be taken to ensure that bond counsel does not inadvertently create an unnecessary contractual obligation.

D. Again, identification of a client (and, in particular in governmental units, "who" is the client) by bond counsel is critical for determining the application of Model Rule 1.7 to an engagement.

E. Under the Model Rules, a concurrent conflict of interest exists if there is: (a) *direct adversity*, where two clients are fundamentally antagonistic to one another, or (b) *material limitation*, where the quality of bond counsel's representation may be affected by duties to another client, a former client, a third person, or by its own interests.

Direct Adversity: If a contemplated representation is or will be directly adverse, the duty of loyalty owed to the client will, necessarily, be affected. The general rule is that adverse representation of concurrent clients is *prima facie* improper and can rarely be cured by consent. Direct adversity normally means an adverse position in litigation. However, an "[a]dverse interest[] may arise between entities independent of their involvement as parties to a lawsuit." *West Virginia ex rel. Morgan Stanley & Co. v. MacQueen*, 416 S.E.2d 55, 60 (W. Va. 1992) [citations omitted]. In Formal Opinion 95-390, the ABA suggested that representation is directly adverse "if the [second] representation involve[s] attacking the conduct or credibility of the second client, or seeking to compel resisted discovery from the client." ABA Comm. on Ethics

and Prof'l Responsibility, Formal Op. 95-390 at 12 (1995) (citing ABA Comm. on Ethics and Prof'l Responsibility Formal Op. 92-367 (1992)).

Factors for each attorney to consider before arriving at the conclusion that the representation (or in cases of direct adversity, the relationship) will not be adversely affected or that consent can be properly given, include:

(i) whether bond counsel can represent an existing client, as well as the new client, with undivided loyalty;

(ii) whether bond counsel can protect the confidentiality of each client;

(iii) the duration and extent of the engagement;

(iv) whether the representation would be limited or altered, as compared to the nature of separate representations; and

(v) the probability that the representation will lead to substantive harm or that a "conflict will eventuate."

Whether a law firm can represent an issuer as bond counsel in a negotiated financing, if another lawyer in that firm is simultaneously representing the underwriter in other unrelated matters, is a subject on which positions vary. Some view that situation as a nonconsentable conflict, while others conclude that consent is possible, based upon the particular facts of a transaction. *See* Iowa Supreme Court Board of Professional Ethics and Conduct, Op. 06-03, Bond Counsel Representation, released Nov. 6, 2006.

In California, the Government Code contains provisions regulating the practice, which in the past had been prevalent, of a single law firm's acting both as bond counsel and underwriter's counsel on the same transaction:

> No bond counsel with respect to a new issue of bonds shall also be counsel, with respect to that new issue of bonds, to the underwriter or other initial purchaser of the bonds. This section does not preclude the bond counsel from rendering one or more opinions to the underwriter or purchaser with respect to the bonds, the documents or laws pursuant to which the bonds are issued, the official statement, offering circular, or other disclosure document describing the bonds, or any related matter, if the opinion is rendered as bond counsel and not as counsel to the underwriter or purchaser.

Cal. Gov. Code § 53593 (1985).

The foregoing Section applies only to local California agencies, and *not* to the State or its agencies and authorities, much less to other states or local governments. Given the breadth of public finance practice, especially among the larger law firms, it is incumbent upon an attorney seeking to undertake work in a state whose laws he does not know well to search for any similar statutory limitations applicable to public finance work in that state.

Material Limitation: Model Rule 1.7(b) deals with competing interests that may distract bond counsel from the main task of loyally serving his client. A "material limitation" translates to an impairment of representation, *i.e.,* "when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests."

By its terms, Model Rule 1.7(b) requires the consent of the client(s) whose representation may be materially limited by the lawyer's other duties or interests. In cases of common representation, consent should be obtained from all affected parties. In obtaining a knowing consent of affected parties in a common representation, it is important to point out to each party that (i) counsel cannot maintain separate confidences as regards each of them; (ii) should a dispute arise between them, counsel may have to withdraw; and (iii) counsel cannot represent any of them in a suit between them related to the transaction.

Imputation: Any knowledge possessed by one attorney in a firm is presumptively possessed by all other attorneys in the firm.

However, some courts have adopted a doctrine of "vertical responsibility" particularly applicable to large law firms. Under the vertical responsibility doctrine, "[a]bsent direct proof to the contrary, the attorney would not be deemed to have shared confidential information relating to matters and services exclusively within the sphere of representation of another department or section of his firm." *Cleveland v. Cleveland Electric Illuminating Co.*, 440 F. Supp. 193, 211 (N.D. OH 1976). In *Cleveland*, the court found no evidence that two attorneys in the same firm's Public Law group and Litigation group, respectively, made confidential disclosures to each other. *Id.*

Case law in this area should be watched carefully for its impact upon the municipal bond practice. In the absence of State case law such as exists in the *Cleveland* case *supra*, strict adherence to the Model Rules in this area provides a safe harbor.

Reasonable Belief: In cases of either direct adversity or material limitation, bond counsel (including for these purposes, the individual lawyer's firm) cannot undertake a new representation unless bond counsel reasonably believes that the representation (or the existing client relationship) will not be adversely affected, *i.e.*, that the proposed representation will not materially interfere with bond counsel's independent professional judgment on either matter. See Model Rule 1.0 for definition of "Reasonable belief".

Factors for each attorney to consider before arriving at the conclusion that the representation (or in cases of direct adversity, the relationship) will not be adversely affected or that consent can be properly given, include:

(vi) whether bond counsel can represent an existing client, as well as the new client, with undivided loyalty;

(vii) whether bond counsel can protect the confidentiality of each client;

(viii) the duration and extent of the engagement;

(ix) whether the representation would be limited or altered, as compared to the nature of separate representations; and

(x) the probability that the representation will lead to substantive harm or that a "conflict will eventuate."

In cases of *direct adversity*, is there a reasonable element of probability of a conflict, as distinct from a remote chance?

In cases of *material limitation*, is there a substantial risk of material and adverse effect, "substantial" meaning that "the risk is significant and plausible, even if not probable?"

In addition, bond counsel should develop a response should the a situation develop to become a conflict, so that the client can evaluate the consequences when giving its informed consent.

Consultation: If after a careful analysis and consideration of all of the factors listed above, bond counsel reasonably believes the representation (or in cases of direct adversity, the relationship) will not be adversely affected, then the client(s) must be consulted and advised of the current or potential conflict. The Model Rules define "consultation" as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question."

The Ninth Circuit has held that the lawyer "must explain to [the clients] the nature of the conflict of interest in such detail so that they can understand the reasons why it may be desirable for each to [withhold consent]." *Unified Sewerage Agency v. Telco Inc.*, 646 F.2d 1339, 1346 (9th Cir. 1981) (citing *In re Boivin*, 533 P.2d 171, 174 (1975)).

Consent: Only after coming to the reasonable belief that the representation will not be adversely affected can bond counsel consult with the client to seek consent (also referred to as a "waiver of conflict"). The subject of conflicts of interest is one of the most fact-specific in the entire field of legal ethics. Knowledgeable, informed consent can only be given if the client is apprised of all pertinent facts and potential consequences. Therefore, it is difficult for any "form" to provide precise, comprehensive language for every transaction.

Model Rule 1.7(b)(4) requires the consent to be confirmed in writing.

There are three situations in which a conflict *cannot* be cured by consent, the first two of which rarely occur in public finance:

(i) conflicts between adversaries in the same litigation;

(ii) conflicts in which one or more of the clients is incapable of giving consent; and

(iii) "other circumstances rendering it unlikely that the lawyer will be able to provide adequate representation."

Consent of Governmental Entity: One further special concern for public finance lawyers is obtaining consent to a conflict of interest from a governmental entity client. Some jurisdictions specifically do not permit such consent. And even if a conflict waiver is permissible where you practice, the decision as to which individual/officer at a public agency should sign such a waiver is not a trivial one. Some agencies, for example, require bond counsel to deal only with issuer's counsel (city attorney, county counsel, *etc.*) on legal matters. Is there effective waiver of a conflict if issuer's counsel signs a letter, but has never communicated on point with the governing board?

VI. PROSPECTIVE CONFLICTS

Prospective conflicts and prospective conflict waivers are of great importance to practicing lawyers in many fields, but perhaps particularly for bond counsel, who tend to represent a limited universe of municipal issuers and conduit borrowers.

In its Formal Opinion 05-436, the ABA Standing Committee on Ethics and Professional Responsibility noted that clients may not consent to certain conflicts, such as a representation prohibited by law. A "client's informed consent to a future conflict, without more, does not constitute the client's informed consent to the disclosure or use of the client's confidential information against the client." Formal Op. 5-436. bond counsel should also "determine whether accepting the engagement is impermissible for any other reason [under the] Model Rule[s]." *Id.*

Model Rule 1.7 permits effective informed consent to a wider range of future conflicts than would have been possible under the Model Rules prior to their amendment.

Whenever a client has given a prospective waiver, bond counsel should reevaluate the waiver when a conflict does arise to determine whether it is reasonable to believe the client contemplated the conflict when signing the waiver. One must always question whether, having obtained a prospective waiver, a lawyer should inform that client when a future, presumably waived, conflict does arise in order to stop that client from later asserting that the waiver was not effective. The best practice will typically be to seek a new waiver from the client specifying the circumstances of the newly identified conflict. *See* also ABA Formal Op. 05-436. https://www.americanbar.org/products/ecd/chapter/219999/

VII. CONFLICTS OF INTEREST – FORMER CLIENTS

Model Rule 1.9 covers conflicts of interest arising from bond counsel's relationships with former clients. In situations in which a firm's municipal practice includes a number of representations gained through an RFP process, of the resultant conflicts can be particularly troublesome, as issuers and underwriters who ask for proposals on a regular basis can be counted on to rotate assignments among a number of law firms. It is not unusual for an issuer to recommend a former bond counsel firm to its underwriter on the next deal.

Rule 1.9 extends the prohibition against representation adverse to a client without consultation and consent beyond the context of simultaneous representations. It provides that a

lawyer who has formerly represented a client may not later represent another client in the same or a substantially related matter in which the second client's interest is materially adverse to the first client's interest, unless the first client consents after consultation. Rule 1.9 then elaborates on this basic provision by tracing its implications for shifting relationships among lawyers and law firms. The Rule concludes by providing that a lawyer who has formerly represented a client in a matter shall not later:

"(1) Use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client."

The issues covered by Model Rule 1.9 arise where bond counsel represents the issuer in a transaction where bond counsel has served as underwriter's counsel or trustee's counsel in a separate, unrelated transaction. The Comment to Rule 1.9 specifically states that a lawyer "is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client."

Comment 9 to the Model Rule 1.9 notes that the provision of the Model Rules "are for the protection of former clients and can be waived if the client gives informed consent "confirmed in writing."

Such a waiver is premised on consultation and consent. There is considerable support for the premise that having once served as underwriter's counsel, later serving as bond counsel in another unrelated transaction would not be "the same or substantially related matter." There are representations where such determination may not be appropriate, however, e.g., when bond counsel has learned confidential information from the underwriter that would be useful in negotiating on behalf of the issuer. Care should also be taken to ensure the termination of any prior engagement, either by means of the initial engagement letter including clear termination wording or a disengagement letter. Words indicating an ongoing relationship after billing may result in an ongoing representation, as can the conduct of the parties, and the courts will look to the belief of the client as to whether the client believes there is an ongoing attorney client relationship in making this determination.

Listed below are questions to determine whether Model Rule 1.9 applies to any of bond counsel's former clients.

(1) Is the client truly a <u>former</u> client of bond counsel, *i.e.*, has the engagement been terminated and does the client understand it has been terminated?

(2) Are the interests of the current and former clients "materially adverse?"

(3) Is there a "substantial relationship" between the two representations?

Under New York Rules of Professional Conduct governing lawyers' ethical obligations to former client, Rule 1.9(a) provides:

"A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing."

Rule 1.9(c) in turn provides that

"[a] lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client, except as these Rules would permit or require with respect to a current client or when the information has become generally known; or (2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client."

See N.Y. State Bar Association Committee. on Professional Ethics Op. 1103 (2016) Ethics Opinion 1103 - New York State Bar Association (nysba.org) ("material adversity" under Rule 1.9 means legal adversity, not economic adversity); see also ABA Formal Op. 99-415 (1999) ("[O]nly direct adversity of interests meets the threshold 'material adversity' sufficient to trigger the prohibitions established in Rule 1.9.") Formal Ethics Opinion 99-415 (americanbar.org)

The ABA Formal Opinion 21-497 (2021), states that "material adverseness' does not reach situations in which the representation of a current client is simply harmful to a former client's economic or financial interests, without some specific tangible direct harm." EO_630.pdf (nysba.org)

Model Rule 1.10(a) provides that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Model Rules 1.7 or 1.9."

VIII. APPLICABLE COURT DECISIONS

The following cases reflect conflicts, competence and other related issues in transactions that should be considered in the ongoing effort of bond counsel everywhere to fulfill their professional obligations:

A. *Cleveland v. Cleveland Electric Illuminating Co.*, 440 F. Supp. 193, 322 (N.D. OH 1976). The City of Cleveland owned and operated a municipal electric light plant, financed by municipal bonds, which directly competed with the private electric company. The City filed a motion to disqualify the electric company's counsel, claiming a conflict of interest because the City previously retained the firm to handle its municipal bond issues. However, because the City had full knowledge of the scope of the firm's representation of the electric company when it retained the firm to work on its bond issues, estoppel and waiver barred the City's claims. In the context of a large firm, knowledge of the case could not be imputed to other firm members unless they practiced in that specialized area.

B. New York City made a motion to the New York State Supreme Court judge requesting to disqualify Sidley Austin LLP as counsel for Morgan Stanley in a municipal bond price-fixing case, saying the law firm was conflicted because it was the city's bond counsel for approximately 30 years. New York State moved to intervene in a whistle-blower case brought by the Edelweiss Fund LLC on behalf of New York State, which alleges Morgan Stanley and other large banks colluded to keep interest rates artificially high on floating-rate municipal bonds known as variable-rate demand obligations, harming states and local governments. The City who was not a party to the price-fixing case cited Model Rules 1.9 and 1.10 in support of its motion, however, the Court ruled that no conflict of interest existed because the court reasoned that the confidential information that Sidley possessed would not adversely affect the City and ultimately was not enough to satisfy the burden of disqualification. See article NYC Asks Court to Bar Morgan Stanley's Counsel in Muni Case (1) (bloomberglaw.com)

C. At the December 19, 1996 sentencing of Mark S. Ferber, formerly of Lazard Freres & Co., United States District Judge William G. Young stated, following his announcement of the sentence for this financial advisor/investment banker for wire fraud and mail fraud "[a]nd if this sorry lot of municipal bond attorneys do not understand it, let me spell it out: it is required that every potential conflict of interest be disclosed in writing and in detail." *See U.S. v. Mark S. Ferber*, Criminal No. 95-10338-WGY (D. Mass).

As the judge further pointed out, the question must be "How much do we have to disclose lucidly, crisply, completely, so that we do not overwhelm the public decision makers with data?" See New Times Article on this case (https://www.nytimes.com/1996/12/20/business/former-partner-at-lazard-gets-33-months-prison-term.html)

D. In *B.L.M. v. Sabo & Deitsch*, 55 Cal. App. 4th 823 (4th Dist. 1997), the court specifically rejected the theory that bond counsel was counsel to the transaction and found that Bond Counsel, hired by the City, owed no duty of professional care to the beneficiary of a bond issue and thus was not liable to B.L.M. for legal malpractice. The court stated:

> [u]nder B.L.M.'s argument Sabo & Deitsch would end up in a completely untenable position: Having been hired by Rialto to work with and advise Rialto and its staff, Sabo & Deitsch would be subject to potential liability should that advice include something detrimental to B.L.M. According to this theory, it would appear that any time the parties to a contract are named in the contract, and a law firm is named in the contract as representing one of the parties, the law firm . . . would owe a professional duty of care to all the other parties named in the contract as well. We reject this approach as being unworkable and undermining the very nature of the attorney-client relationship. 55 Cal. App. 4th at 832.