

The Role of Different Categories of Attorneys in NC Environmental Health

Updated by Jill Moore, July 2019¹

Over the course of a career, it is inevitable that an environmental health specialist or supervisor will interact with one or more lawyers: county (or departmental) attorneys, staff attorneys from the state Attorney General's (AG's) office, district attorneys, insurance company attorneys, lawyer faculty from the UNC School of Government, or lawyer staff members from the NC Division of Public Health. These different categories of attorneys have different roles and interact with environmental health around different issues. This document provides brief descriptions of the types of attorneys and the roles each plays in North Carolina's environmental health programs.

County or Departmental Attorney

Each county has a county attorney who represents the county's departments, including the health department or consolidated human services agency. District health departments and public health authorities have departmental attorneys who serve them in the same way a county attorney would. Some counties have a legal department with one or more attorneys on staff, while others contract with attorneys in private practice. The extent to which environmental health specialists and supervisors have direct access to their attorneys varies widely between jurisdictions, so it is important to know your local policies and procedures for engaging the county or departmental attorney when you need him or her to advise you, support your enforcement of public health laws, or represent you in a lawsuit. If you believe you need the attorney's assistance, consult with your supervisor and/or health director about how to make that contact.

Roles of the county/departmental attorney in environmental health:

- *Advice:* Some county or departmental attorneys are available to provide general advice for how to approach situations that may raise legal concerns. It is important to keep in mind that the county/departmental attorney is not an expert in environmental health statutes, rules, or practices—the EHS is the expert in those matters and should be prepared to explain them to the attorney. The attorney can then advise on matters such as compliance, or engaging and interacting with the legal system. When an EHS is faced with a challenging situation that looks like it may be leading to litigation, engaging the attorney as soon as possible is very important and may defuse the situation.
- *Assistance with enforcing public health laws:* In some counties, the county attorney actively assists with enforcement actions, while in other counties the attorney rarely gets involved.

¹ This document is adapted from a 2012 handout, "Who are all these lawyers?", by Aimee Wall, JD, MPH, a faculty member at the UNC School of Government. I have updated it but do not claim original authorship or credit for recognizing the need for this information. That said, any errors in this version are solely my responsibility.

Many enforcement actions involve state rules, so the state AG's office may be available to assist if the county is not.

- *Representation in a lawsuit:* If you are sued based on actions related to local public health rules, the county/departamental attorney or an insurance attorney will represent you. If you are sued based on actions related to state rules, the county attorney may be involved but most likely the AG's office or an insurance attorney will take the lead. In some situations it may be a conflict for the county/departamental attorney to represent both you and the county/departament—for example, if a lawsuit names both you and your county or agency separately, or if the conflict is between you and your county or department (such as in an employment matter).

Attorney General (AG) (NC Department of Justice)

The Attorney General's office – the North Carolina Department of Justice – represents the state of North Carolina. EH specialists and supervisors are considered agents of the state when they are enforcing state public health.

Roles of the AG's office attorneys in environmental health:

- *Information and advice:* The attorneys who work with public health in the AG's office have traditionally worked with state environmental health professionals and are sometimes available to provide information and advice to local professionals. They are a limited resource and can be difficult to reach, so be aware of other information resources as well, such as the School of Government attorneys. However, if you anticipate litigation about a matter related to your environmental health work, it is important to contact the AG's office.
- *Assistance with enforcing public health laws:* When EH specialists and supervisors are enforcing state statutes and rules, the AG's office may be able to advise about the appropriate remedy for a particular violation and assist you in using your enforcement tools. They have historically been critical partners when taking permit actions or imposing administrative penalties, particularly in counties where the county attorney is not actively involved. If there is an appeal of an enforcement action involving state rules, the AG's office represents the local agency in the administrative hearing. (The enforcement of local rules is a local matter that should be discussed with the county or departamental attorney.)
- *Representation in a lawsuit:* If you are sued based on actions related to state public health statutes or rules, the AG's office may serve as your attorney.

District Attorney (DA)

The district attorney is an elected official who represents a local judicial district, which may be comprised of one or more counties. The DA prosecutes criminal cases. Each DA's office has assistants, known as ADAs, who are the attorneys that will work with environmental health specialists and supervisors in criminal prosecutions based on public health laws.

Roles of the DA's office in environmental health:

- *Information and advice:* The DA's office is not a resource for general information and advice. However, it is very desirable for the local environmental health program to have a relationship with this office, as it is likely specialists or supervisors will interact with them on enforcement matters.
- *Enforcement of public health laws:* Most public health law violators can be charged with a misdemeanor (see your materials on public health remedies for more information). If your agency decides to charge a person with a misdemeanor, you will work with an ADA. Like county attorneys, ADAs are not experts in environmental health statutes, rules, or practices—the EHS is the expert in those matters and should be prepared to explain them to the attorney. The ADA will be responsible for managing the case. He or she will talk with victims and witnesses, negotiate plea agreements, and argue the state's case before the judge.
- *Representation:* Your relationship with the ADA is non-representational. In other words, he or she is not your attorney; the ADA represents the public in prosecuting crimes. If you are a witness for a case, the ADA will likely discuss your evidence and testimony with you, but you are not the ADA's client.

Insurance Company Attorney

Many counties have insurance arrangements that include attorneys to defend them if they are sued.

Role of the insurance company attorney in environmental health:

- *Information and advice:* Consult local administration to determine whether compliance and risk management advice is available from your agency's insurance company.
- *Enforcement of public health laws:* Insurance company attorneys are not involved in the enforcement of public health laws.
- *Representation:* If you or your agency are sued and the insurance company is potentially responsible for paying any judgments against you or the agency, the insurance company may wish to have one or more of its attorneys involved in the litigation.

Lawyer Faculty – UNC School of Government

The UNC School of Government (SOG) has faculty members who specialize in different areas, including public health law, animal control, criminal law, general local government law issues (such as public records), public employment, contracting, and more.

Role of the UNC School of Government in environmental health:

- *Information and advice:* SOG faculty members' primary role is educational—providing information about applicable laws to local government officials and employees. Faculty members teach short courses, hold conferences, speak at others' conferences, write books and articles about topics in their areas of expertise, and respond to telephone or email inquiries from public officials and employees. We welcome these inquiries and will respond if we can, or

try to find a resource for you if we can't. Faculty members strive to keep up relationships with state and local officials involved in their areas of expertise, so they are often familiar with practice issues, but you should anticipate that you may need to explain aspects of your work before they can assist with your questions.

- *Enforcement of public health laws:* SOG public health law faculty can provide information about public health remedies and how to exercise them. They cannot assist in pursuing or managing enforcement actions.
- *Representation:* Your relationship with SOG faculty is non-representational. In other words, the faculty member is not your attorney and will not be able to represent you in litigation. While information shared with faculty members ordinarily is not shared further, it is important to be aware that discussions with SOG faculty members are not privileged and any records (such as emails or copies of documents related to a matter) that are sent to SOG faculty members are public records and would be released if someone requested them.

Lawyer Staff – NC Division of Public Health

The NC Division of Public Health has an attorney in charge of its Office of Legal and Regulatory Affairs. This lawyer is the point person for adopting, reviewing and revising the statewide public health rules, including environmental health rules.

Roles of the NC DPH lawyer staff in environmental health:

- *Information and advice:* The DPH lawyer may be able to respond to questions about the law and help formulate reasonable interpretations when laws are ambiguous.
- *Enforcement of public health laws:* The DPH lawyer may be able to provide information about public health remedies and how to exercise them.
- *Representation:* The DPH lawyer does not represent local or state agencies or employees in litigation.