

N.C. County Attorneys 2012 Winter Conference

Ethics, Public Records, Discovery, and Metadata

1. County and city are negotiating terms of an interlocal agreement whereby the city will provide water services to the county. County attorney drafts contract and forwards to manager and board for review. Although the contract is in “final” form, it contains embedded track changes, reflecting multiple edits to the agreement and comments from those editors.

County and city enter into the interlocal agreement. Although the final version of the agreement is in hard copy only, the county manager and several board members retain the draft document (with the embedded track changes) in electronic format. A citizen makes a public record request for any and all (paper and electronic) copies of the agreement, including any metadata associated with the agreement.

- Must the county produce the “draft” electronic copies of the agreement?
 - If so, must the county produce the metadata associated with the electronic documents (including the embedded track changes)?
 - Ethics concerns for County Attorney?
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2. County and city officials have conflicting interpretation of the interlocal agreement terms. City eventually sues county. City Attorney makes discovery request for, among other things, all existing electronic and hard copy versions of the interlocal agreement in their native format. City Attorney also makes public records request for the same documents.
 - Must the county produce the “draft” electronic copies of the agreement in response to the discovery request?
 - Must the county produce the “draft” electronic copies of the agreement in response to the public records request?
 - If so, must the county produce the metadata associated with the electronic documents (including the embedded track changes)?
 - Ethics concerns for County Attorney?
 - Ethics concerns for City Attorney relating to public records request? Relating to possible receipt of metadata?