

WORKING WITH YOUR ATTORNEY (THOUGHTS FROM AN ATTORNEY)

This article identifies a few strategies to establish and maintain a strong and successful working relationship with your municipal attorney. Some of these strategies will materialize differently with in-house legal counsel and independent contractors, but the underlying principles apply equally.

Define Expectations

Both the attorney and the client benefit from defining their relative expectations.

Some administrators and governing bodies involve their municipal attorneys in matters such as agenda planning, periodic code review, and council goal-setting and retreats; others direct their attorneys to spend time on specific legal questions only as directed. Some jurisdictions want and expect a legal advisor to attend all meetings of the governing body and of many boards and commissions; other jurisdictions expect attorney presence only when specifically requested. Many variables dictate these varying approaches. Both the attorney and client should take the time to determine what approach works best for the particular jurisdiction.

Periodic Review and Evaluation

Setting expectations typically occurs near the beginning of the attorney-client relationship. It is important to follow up on those defined expectations.

Employers, including municipalities, are no strangers to the periodic review and evaluation of employees. In this regard, the position of city attorney should be no different from any other.

Even if your legal counsel is an outside person or law firm, you may and should periodically sit down so both parties can express what is working and what could be done better. Contrary to popular opinion, attorneys are (occasionally) capable of receiving constructive criticism. Providing services that are tailored to the jurisdiction is greatly aided by periodically looking back and taking stock. Do not be afraid to ask your attorney to participate in a review process. The municipal attorney community in Colorado is truly interested in public service; its members would welcome the dialogue.

Identify the Gatekeeper

For municipalities of every size, it is important that the person or people authorized to direct the city attorney's office be clearly designated.

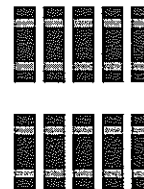
For in-house legal counsel, time spent unnecessarily analyzing an issue or preparing an unneeded document represents unproductive staff time and a loss of city resources. For contracted legal counsel, time spent working on a project that is not ultimately needed represents a true loss of dollars in the form of legal fees spent for no return. It is therefore critically important (and can be a part of the expectation-setting conversation) that the city attorney know who can authorize him to engage in certain work.

It is also important for city staff to receive training on the topic so they know who can (and cannot) call up the city attorney to request legal research.

Policy vs. Law: Remember the Difference

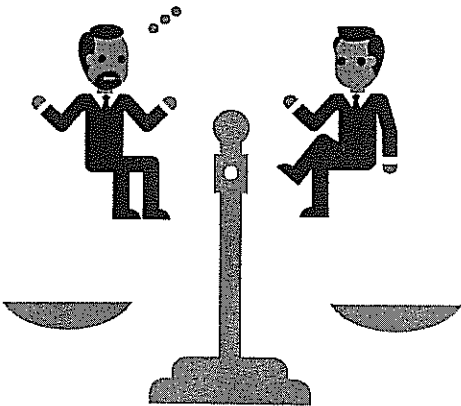
The attorney's role is to provide analysis, opinion, and counsel on legal issues. The policy questions — which are often the most challenging ones — are not the attorney's to answer. Those must ultimately be answered by the policymakers — elected officials aided by their policy advisors.

As a municipal attorney in private practice providing services to communities in which I do not live, I am keenly aware of my status as "outsider." I am neither a citizen nor a business owner; I cannot vote and express my opinion on municipal policy issues at the ballot box; I was not elected by the people of the community to represent their voice and to make tough choices on their behalf. It is the governing body's role to establish, refine, and direct the implementation of policy. To insert my personal opinion into a policy-setting discussion is, in my view, inappropriate and inapposite to the democratic process. Doing so would dilute the voice of the people who elected their leaders with an outsider's voice.



This policy-neutral role is a good one from which to dispense legal advice. Without an emotional connection to or investment in the issue at hand, your attorney is able to provide a neutral analysis of the legal issues. It is not the municipal attorney's role to advocate for a particular outcome among several lawful choices; rather, it is to advise decision-makers of the legal implications of their potential choices.

As one of my early mentors told me prior to my attending a council meeting in his stead, "Remember: You are Switzerland."



Notwithstanding all of this, there may be occasions when you really want your city attorney's opinion on a policy question. Municipal attorneys with significant tenure in a community often have valuable institutional knowledge of the political climate of the area, the community's relationships with other area jurisdictions, and similar issues. It is not inappropriate to ask your town attorney if she has insight into any such issues. However, it is important for the attorney to distinguish — and for the client to recognize — the difference between the legal opinion

and the policy opinion, recognizing that the former is strictly within the attorney's job description and the latter is not. Elected officials should therefore accord each opinion the appropriate weight.

Keep Your Attorney Involved

Keep your municipal attorney apprised of issues that you know or suspect may require legal analysis later. There is nothing more frustrating from your attorney's perspective than trying to untangle a legal knot that could have been avoided entirely with a small bit of legal advice on the front end.

Equally confounding is the (surprise!) revelation by a staff member during a public meeting of some detail that alters the entire legal landscape of an issue. The attorney is then faced with the challenges of analyzing the issue anew and potentially presenting amended advice and/or recommendations, all while safeguarding the attorney-client privilege.

Municipal attorneys appreciate the need of a public entity to manage and control its budget. Legal fees can represent a significant expense, particularly for smaller communities that contract for those services with private firms. However, an ounce of keeping your municipal attorney in the proverbial loop is worth pounds of "fix the problem later" legal fees.

Invite training

Hand in hand with the foregoing, invite your attorney to offer training when time and budget allow. Nothing will make your city attorney happier than asking her, "How should we be conducting this sort of hearing?" or "What are the legal issues we should

look out for when we do [fill in the blank]?" Those questions present training opportunities to arm staff and officials with legal knowledge on the front end.

Providing training on the common legal issues that confront various departments and boards accomplishes a few things: it mitigates the potential for successful legal challenges (and their attendant costs); it provides officials and staff the confidence that comes with preparedness; and it projects to the public a knowledgeable and professional organization.

Get to Know Your Attorney!

One of my favorite clerks once mentioned to me that she had received some training on working with her municipal attorney. Of course, my interest piqued, I asked her what she was told. Among the list of very good pointers was the revelation that municipal attorneys are people too. It's true. Much to my 4-year-old's chagrin, neither I nor any of my office-mates make our daily commute in an alien pod. You can check under the hood, but I bet your city attorney does not either. With nods to Rodgers & Hammerstein and Jon Lovitz, "Get to know us!" Put us on your guest lists, invite us to your holiday parties. We promise not to analyze the party's status under the Sunshine Law (more than once).

