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Attorney for Whom? Attorney/Client Privilege in Municipal Government

Ethics Law eLearning
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Agenda

- The Office of City Attorney
- Relationships with the City and with Officials
- Confidentiality
- Limits on Representation
- Takeaways



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The Office of City Attorney



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The Office of City Attorney

- Established and defined by municipal charter
- Two paths
 - Employed in house
 - Retained

City attorney appointment, removal, and compensation, qualifications and duties.

- (a) *Appointment.* The city attorney shall be appointed by the affirmative vote of four council members or a majority of the members of the council. Upon request by the city attorney a public hearing will be held to remove the city attorney. The city attorney shall be a member in good standing of The Florida Bar.
- (b) *Duties.* The city attorney shall be the legal advisor to the council, the city manager and all city departments and agencies. When required by the city council, the city attorney shall prosecute or defend, on behalf of the city, suits and controversies in which the city is a party; and shall prepare or review and approve as to form all contracts, bonds, and other instruments to which the city is a party. The city attorney shall perform all other duties directed by law or the city council.
- (c) *Absence.* By letter, filed with the council, the city attorney shall designate one or more assistant city attorneys to perform the duties of city attorney during a temporary absence or disability. This designation shall be limited to the expiration of this time, the council shall appoint an interim or new city attorney in accordance with the provisions of the charter.

(90, § 3, 1, 21, 90/3, 0, 00)



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Obligations

Takes direction from/serves at pleasure of . . .

- Municipal council
- Mayor
- . . . depending on charter provisions

Obligated to fulfill ethical obligations established by the Florida Bar



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Relationships with the City and with Officials



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The attorney's client is the council as a body



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Directing the Attorney

Majority of the elected body

Often responsive to managerial-level requests
as well, without specific Council direction



Title VII
EVIDENCE

Chapter 90
EVIDENCE CODE

90.502 Lawyer-client privilege.—

(1) For purposes of this section:

(a) A "lawyer" is a person authorized, or reasonably practice law in any state or nation.

(b) A "client" is any person, public officer, corporate entity, either public or private, who consults a lawyer w or who is rendered legal services by a lawyer.

(c) A communication between lawyer and client is "

Privilege and Confidentiality



Defining Terms

Confidential

“A communication between lawyer and client is ‘confidential’ if it is not intended to be disclosed to third persons . . .” F.S. 90.502(1)(c)

Privilege

What allows a client “to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications . . . made in the rendition of legal services to the client.” F.S. 90.502(2)



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It's Complicated . . .

A councilmember may wish to have a confidential communication with their city attorney

In some instances, that communication may be privileged

In some instances, it will not be



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General Guidance

- Records created in relation to such communications are not privileged
- Communications occurring in a public meeting (or what should be a public meeting) are not privileged
- Communications that concern possible threats to the legal interests of the city itself are not likely to be considered privileged and may not be able to be held confidential



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Do not assume that every conversation with your municipal attorney falls within the protections of attorney-client privilege.



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Limits on Representation



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The City Attorney Should Not . . .

- Provide legal services if doing so:
 - Creates a conflict of interest
 - Constitutes a breach of the applicable ethical standards
- Provide legal services to councilmembers or other city staff regarding matters outside of their municipal responsibilities



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And it May be Necessary for the Attorney . . .

To act in a manner that may be to the detriment of individual councilmembers or employees, should they be engaged in or aware of activity that puts the City at substantial legal risk



The Guiding Principle

Upholding the Public Trust





Takeaways



Always Seek to Do the Right Thing



Ask Before Taking Action



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Follow Your Attorney's Legal Counsel



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If you believe you may have committed
a serious ethical or legal infraction,
seek the counsel of your own attorney



Questions???



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Thank you

Jay Daigneault, Esq. and Randy Mora, Esq.
Trask Daigneault LLP

Shwanda Barnette, Florida League of Cities
and

You!

