

COUNCIL & COUNSEL

Art Pertile, III

Unique Relationship



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- City Attorneys have a unique role in working with City Councils.
- The City Attorney often does not have daily interaction with Council members. The City Council-City Attorney relationship works best when there is open communication, mutual respect and trust.
- Some City Attorneys are City employees, and some are members of private law firms.

Unique Relationship

- A few City Attorneys are elected, some are appointed by the City Manager but most are appointed by the City Council.
- The City Attorney is the chief legal officer of the City. The City Attorney's job is to provide legal advice to minimize the City's liability and promote compliance with the law.
- The relationship between the City Council and City Attorney is a critical component in ensuring that the City functions as a well-managed organization.

Who is the Client



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- The City Attorney represents the City as a whole.
- The City Attorney's duty of loyalty and confidentiality is owed to the City and the Council as a whole, rather than to an individual council member.
- The Council majority gives direction to the City Attorney.

Who is the Client

- When a Council contains majority and minority factions, it may provide direction to the City Attorney by a majority vote over the objection of the Council members in the minority.
- Once the Council has reached a policy decision, the City Attorney is bound to respect that decision unless his or her ethical obligations to the City require otherwise.
- The City Attorney must provide balanced legal advice to both the majority and minority factions.

Who is the Client

- The City Attorney's role is not to pass judgment about the Council's action, but to exercise his or her ethical duty to ensure that the council fully understands the legal ramifications of its actions. If the Council proceeds with the action despite the City attorney's warnings, the City Attorney has an obligation to defend the Council's action to the extent that his or her ethical obligations allow.

Attorney-Client Privilege



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- The City Council holds the privilege.
- The City Council may decide to waive the privilege.
- Waiver of the privilege should be a decision made by a majority of the council expressly stated on the public record. Waiver of the privilege should not be the decision of an individual Council member.

Attorney-Client Privilege

- Communications with individual council members on City business cannot be kept confidential from the full City Council.
- Information a Council member shares with the City Attorney is not confidential with respect to other Council members, and the information may be disclosed to the entire Council.

Helpful Hints



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- If an agenda item raises a legal question for a council member, the council member should ask the City Attorney as soon as possible so that he or she can fully research the question, and provide a complete and accurate answer.

Helpful Hints

- When seeking advice from the City Attorney, it's important for you to clearly understand what you want from the conversation. If you're asking about a specific fact pattern, you should try to be fully informed about the facts and communicate them to the City Attorney.

Helpful Hints

- Ask the City Attorney how much time she anticipates is needed to provide an answer. Or suggest a deadline and ask the City Attorney whether the deadline can be met.

Helpful Hints

- Be able to accept “The law is unsettled in this area,” or “There is a case before the courts right now that may provide some clarification.”

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