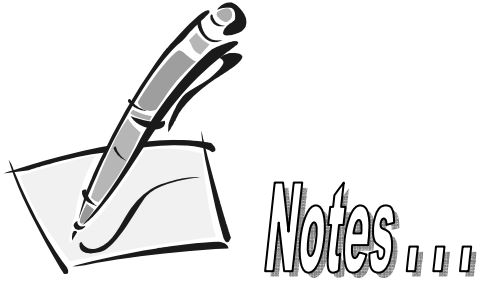




Ethical Principles for City Attorneys

Thursday, May 5, 2011 General Session; 2:00 – 4:15 p.m.

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Ethical Principles for City Attorneys¹

Adopted October 6, 2005

Preamble

A city attorney occupies an important position of trust and responsibility within city government. Central to that trust is an expectation and commitment that city attorneys will hold themselves to the highest ethical standards. Every effort should be made to earn the trust and respect of those advised, as well as the community served.

The City Attorneys Department of the League of California Cities has therefore adopted these ethical principles to:

- ❑ Serve as an aspirational guide to city attorneys in making decisions in difficult situations,
- ❑ Provide guidance to clients and the public on the ethical standards to which city attorneys aspire, and
- ❑ Promote integrity of the city and city attorney office.

City attorneys are also subject to the State Bar's Rules of Professional Conduct. Rules of particular interest to a City Attorney include: Rules 1-100 (general application of rules), 2-100 (communication with a represented party), 2-400 (discriminatory conduct), 3-100 (confidential information), 3-110 (competence), 3-120 (sexual relations with client), 3-210 (advising violation of law), 3-310 (adverse interests), 3-500 (communication), 3-510 (settlement offer), 3-600 (organization as client), 5-100 (threatening charges), 5-110 (filing criminal charges), 5-210 (witness at trial), and 5-220 (suppression of evidence)². For an explanation of how the rules apply to city attorneys, please see [Practicing Ethics](#) published by the League of California Cities in 2004, available at www.cacities.org/attorneys. These aspirational ethical principles are not an effort to duplicate or interpret the State Bar's requirements or create additional regulatory standards.

¹ When used in this document, the term "city attorney" refers to all persons engaged in the practice of municipal law. This includes attorneys in firms that provide legal services to cities on an ongoing basis that are the functional equivalent to services provided by assistant or deputy city attorneys (for example, on redevelopment and personnel issues).

² The listing of certain Rules of Professional Conduct particularly relevant to City Attorneys was added to the adopted report for the session on "Professional Responsibility Challenges for Today's City Attorney" at the 2011 City Attorneys Spring Conference.

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The role of the city attorney and the client city varies. Some city attorneys are full-time public employees appointed by a city council; some are members of a private law firm, who serve under contract at the pleasure of a city council. A few are directly elected by the voters; some are governed by a charter. When reflecting on the following principles, the city attorney should take these variations into account.

The city attorney should be mindful of his or her unique role in public service and take steps to ensure his or her words and deeds will assist in furthering the underlying intent of these principles.

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Fundamental Principles (There is no significance to the order of the list.)

Principle 1 (Rule of Law). As an officer of the courts and local government, the city attorney should strive to defend, promote and exemplify the law's purpose and intent, as determined from constitutional and statutory language, the case law interpreting it, and evidence of legislative intent. As an attorney representing a public agency, the city attorney should promote the rule of law and the public's trust in city government by providing representation that helps create a culture of compliance with ethical and legal obligations.

***Explanation.** The city attorney's advice and actions should always proceed from the goal of promoting the rule of law in a free, democratic society. Because the public's business is involved, within the city organization the city attorney should consistently point out clear legal constraints in an unambiguous manner, help the city to observe such constraints, identify to responsible city officials known legal improprieties and remedies to cure them, and if necessary, report up the chain of command to the highest level of the organization that can act on the client city's behalf.*

Examples

1. The city attorney should give advice consistent with the law and the policy objectives underlying those laws, but may consider and explain good faith arguments for the extension or change of a legal principle.
2. The city attorney should not attempt to justify a course of action that is clearly unlawful. Where the city attorney's good faith legal assessment is that an act or omission would be clearly unlawful, the city attorney should resist pressure to be "creative" to come up with questionable legal conclusions that will provide cover for the elected or appointed public officials to take actions which are objectively unlikely to be in conformance with the legal constraints on the city's actions.
3. The city attorney's guiding principle in providing advice and services should be sound legal analysis. The city attorney should not advise that a course of action is legal solely because it is a common practice ("everyone else does it that way"), a past practice ("we have always done it that way"), or because the risk of suit or other consequence for action is considered low.
4. The city attorney's advice should reflect respect for the legal system.
5. If the city has made a decision that the city attorney believes may be legally harmful to the city, the city attorney should encourage the city to take any necessary corrective action but do so in a way that minimizes any damage to the city's interests.
6. The city attorney should be willing to give unpopular legal advice that meets the law's purpose and intent even when the advice is not sought but the legal problem is evident to the attorney.

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7. The city attorney should not only explain and advise the city on the law, but should encourage the city to comply with the law's purpose and intent.

Principle 2 (Client Trust). The city attorney should earn client trust through quality legal advice and the manner in which the attorney represents the city's interests.

Explanation. It is difficult for the city attorney to effectively represent the city if public officials do not trust the city attorney's competence and professionalism.

Examples

1. The city attorney should use available resources to maximize his or her ability to advise knowledgeable on issues of municipal law.
2. The city attorney should be clear with individual council members and staff on the extent to which their communications with the city attorney can and will be kept confidential. The city attorney should be especially clear when confidentiality cannot be lawfully maintained.
3. Sometimes the city attorney will be asked a question during a public or private meeting and the city attorney is unsure of the answer. When time permits, the city attorney should advise that additional time is needed to research the matter and provide an appropriate response. If extra time is not available, then the city attorney should be candid regarding any uncertainty he or she feels about the answer given.
4. When a question is posed and the city attorney knows there is no definitive, clear conclusion, the city attorney should describe the competing legal considerations, as well as inform the city of the legally supportable courses of action, together with an evaluation of the course that is most likely to be upheld.
5. In the event the city attorney is asked in a public forum to provide advice that could undermine the city's ultimate position, the city attorney should seek to meet in closed session, if legally permissible, or, if time permits, provide his or her opinion in a confidential memorandum. If the advice must be given during an open session, then the city attorney must be mindful of the impact that advice given in public may have on the city's ultimate position.
6. When the city attorney has a duty to provide documents or other information to outside law enforcement authorities, he or she should do so in a way to minimize harm to the city consistent with that duty.

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Principle 3 (No Politicization). The city attorney should provide legal advice in a manner that avoids the appearance that the advice is based on political alignment or partisanship, which can undermine client trust.

Explanation. The city attorney and the city attorney's advice need to be trusted as impartial by the entire council, staff and community.

Examples

1. The city attorney should provide consistent advice with the city's overall legal interests in mind to all members of the city team regardless of their individual views on the issue.
2. Each city council member, irrespective of political affiliation, should have equal access to legal advice from the city attorney, while legal work on a matter consuming significant legal resources should require direction from a council majority.
3. The city attorney or persons seeking to become city attorney should not make campaign contributions to or participate in the campaigns of that city's officials, including candidates running for that city's offices or city officers running for other offices. For private law firms serving as city attorney or seeking to become city attorney, this restriction should apply to the law firm's attorneys.³
4. When considering whether to become involved in policy advocacy on an issue that may potentially come before the city, the city attorney should evaluate whether such involvement might compromise the attorney's ability to give unbiased advice or create the appearance of bias.

Principle 4 (No Self Aggrandizement). The city attorney should discharge his or her duties in a manner that consistently places the city's interests above self-advancement or enrichment.

Explanation. The city attorney, by his or her acts and deeds, should demonstrate that his or her highest professional priority is to serve the city's needs.

Examples

1. The city attorney's operating and legal services budget requests should be based on the goal of efficiently serving the client city's realistic legal needs (*i.e.* avoid "empire building").

³ This example does not affect contributions to the League or its subsidiary bodies for educational or any other purpose, including any League educational programs designed to prepare officials for higher office.

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2. The city attorney should provide advice without a focus on garnering personal support or avoiding personal criticism.
3. While it is appropriate for a city attorneys to provide both advisory and litigation services, a city attorney should give the city a full range of reasonable options including alternatives to litigation for resolving issues.

Principle 5 (Professionalism and Courtesy). The city attorney should conduct himself/herself at all times in a professional and dignified manner, interacting with all elected officials, city staff, members of the public, and the media with courtesy and respect.

Explanation. The city attorney should be a role model of decorum and composure.

Examples

1. The city attorney should provide advice and information to the council and individual council members in an evenhanded manner consistent with city policy governing the provision of legal services to the city.
2. The city attorney should communicate in a way that is sensitive to both the context and audience, explaining the law in a way that is understandable.
3. In interactions with the public, the city attorney's role is to explain procedures and the law, but not engage in debate.
4. The city attorney should show professional respect for city staff, colleagues, the legal system and opponents. The city attorney should not personally attack or denigrate individuals, particularly in public forums.
5. The city attorney should not seem to endorse, by silence or otherwise, offensive comments made to him/her about others.
6. Sometimes the city attorney will provide advice in public, either because of a city's approved practices or as necessitated during a public meeting. Such advice should be provided in a low-key, dispassionate and non-confrontational manner.
7. The tone of the city attorney's advice and representation should not give the appearance of a personal attack on an individual, even when it is necessary to explain that a particular official's action is unlawful.
8. The city attorney should be open to constructive feedback and criticism.

Principle 6 (Policy versus Law). The city attorney's obligation is to understand the city's policy objectives and provide objective legal advice that outlines the legally defensible options available to the city for achieving those objectives.

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Explanation. *The city attorney must respect policymakers' right to make policy decisions.*

Examples

1. The city attorney may offer input on policy matters, but should make clear when an opinion is legal advice and when it is practical advice.
2. The city attorney should not let his or her policy preferences influence his or her legal advice.
3. If a city attorney finds it necessary to advise the city that a particular course of action would be unlawful, the city attorney should strive to identify alternative approaches that would lawfully advance the city's goals.

Principle 7 (Consistency). The city attorney should conduct his or her practice in a way that consistently furthers the legitimate interests of cities.

Explanation. *Consistency in the legal positions taken by city attorneys is vital to city attorneys' credibility with the courts, clients, and the public.*

Examples

1. The city attorney should not represent a private client if that representation will necessitate advancing legal principles adverse to cities' clearly recognized and accepted interests.
2. When providing advice, the city attorney should inform his or her city of any far-reaching negative impacts a position may have on the city's own potential future interests as well as cities' interests in general, particularly when establishing legal precedent.
3. The city attorney should carefully consider whether to hire or recommend a firm that advances legal principles adverse to city interests on behalf of private clients.

Principle 8 (Personal Financial Gain). The city attorney's primary responsibility is to serve the city's interest without reference to personal financial gain.

Explanation. *An important aspect of the city attorney profession is public service.*

Examples

1. The city attorney should provide the highest possible quality work regardless of the remuneration received.

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2. The city attorney's representation should be based on a realistic understanding of the city's needs in light of the city's fiscal and other constraints. However the city attorney should advise the city when additional resources are necessary to provide the level of legal services the city requires.
3. The city attorney should refrain from providing unnecessary or redundant services to the city.
4. The city attorney should never use the power, resources or prestige of the office for personal gain.

Principle 9 (Hiring by and of City Attorneys). The selection and retention of the city attorney and city attorney staff should be based on a fair process that emphasizes professional competence and experience. The process should not include inappropriate considerations such as political, personal or financial ties.

Explanation. The public's trust in the quality of the city's legal services is undermined if it appears that considerations other than competence affected the decision to hire someone.

Examples

1. The city attorney should engage staff and vendors based on objective standards relating to professional competence and experience.
2. The city attorney should avoid providing gratuities to decision-makers during the pendency of decisions relating to the city attorney's employment.
3. City attorneys must keep employment negotiations separate from the city attorney's role as the city's legal advisor.
4. The city attorney should not undermine the employment of an incumbent city attorney. The city attorney may respond to unsolicited inquiries from a potential client about future representation.
5. The city attorney should maintain an office that is open to employees from diverse backgrounds and remove unnecessary barriers to success in his or her office and in the legal profession.
6. The city attorney should not award or recommend award of litigation or legal services-related contracts if the public could question whether the contract was awarded for reasons other than merit, such as the contractor (or member of the contractor) providing gifts to or participating in political campaigns of (including making campaign contributions to) officials with the power to award the contracts.

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7. The city attorney should hire or recommend staff and consultants who adhere to these ethical principles and encourage existing staff and consultants to do likewise.

8. The city attorney should seriously consider refusing to represent cities that do not support the city attorney's adherence to these principles

Principle 10 (Professional Development). The city attorney should contribute to the profession's development by improving his or her own knowledge and training and by assisting other public agency attorneys and colleagues in their professional development.

Explanation. For city attorneys to remain a vital, positive part of municipal government, members of the profession should take affirmative actions to advance respect for and proficiency by its practitioners.

Examples

1. City attorneys have a strong tradition of assisting their colleagues through formal or informal sharing of their knowledge and expertise, including active participation in the League of California Cities, the State Bar and a local municipal attorney group or bar association. This tradition also includes sharing of research and opinions when consistent with protecting client confidences.

2. The city attorney should continually strive to improve his or her substantive knowledge of the law affecting municipalities through presenting or attending appropriate educational programs.

3. The city attorney should keep in mind the dynamic nature of municipal law and update his or her understanding of the law on an issue, rather than relying on past knowledge.