

# Manager's Corner

## Let's Be Candid: How to Get the Most out of Your Attorney-Client Relationship with Your General Counsel

By Steven L. Flower<sup>1</sup> and Lori S. Liu<sup>2</sup> - Richards Watson & Gershon

Candor is central to your agency's attorney-client relationship with its general counsel. It allows them to provide accurate legal advice based on complete information and leads to more effective representation and better outcomes for your agency. Candor in this sense does not mean informality or overfamiliarity, but rather a foundation of open and clear communication that helps your agency get the most of its attorney-client relationship with your general counsel.

### **Tell Your Attorney What's Important to You**

As an agency director or manager, you can help foster an effective attorney-client relationship by being candid with your general counsel about what is most important to you and your agency.

This includes sharing such basic information as to the day-to-day operations of the public services you provide. Local government attorneys tend to be generalists by both nature and necessity, and this is especially true for general

counsels. You are the subject matter experts, and sharing your expertise with your attorney will put them in a better position to understand the specific context of your legal questions and anticipate how the outcomes might impact your operations.

More broadly, it is important to be candid with your general counsel about your agency's policy priorities. Every good local government attorney takes care to not substitute their own policy preferences for those of the agency's duly elected or appointed public officials. If left in the dark about your priorities, however, they might not realize that what seems like a relatively minor legal issue to them could have larger impacts for the agency in light of your policy goals.

Another thing to consider if your agency contracts with a firm or solo practitioner to be your general counsel, is familiarizing them with the agency's organizational structure, workflow, and policies (including purchasing and budgetary policies). Doing so puts them in a better position to help you when a legal issue comes up because they will already know which departments might be involved and who within the agency should be consulted to address the matter. Similarly, if you are candid about timing needs and deadlines, your attorney will be able to more effectively budget their time.

On an even more granular level, when you have a specific legal question for your general counsel to review and analyze, candidly disclose all of the relevant information you have, especially facts that might seem unfavorable to the agency.

Communications with your general counsel will generally be protected by the attorney-client privilege because candor is so important to effective legal representation. As discussed more below, your attorney also has a professional ethical duty to keep communications with people within the agency confidential subject to certain limitations.

The advice you receive from your general counsel will only be as good as the information they are provided. Your attorney will be able to more effectively advise your agency if they are apprised of all relevant facts on an issue, as opposed to merely providing a hypothetical scenario.

## Find Out What's Important to Your Attorney

Candor is a two-way street, so it's also important to ask your general counsel what is important to them. At the most basic level, they want to employ their legal expertise and experience in service to the best interests of their client (which they will now understand since you've already candidly explained what is important to you).

The next most important thing to any public agency attorney is ensuring that everyone within the agency understands that their client is the agency itself and not an individual director, officer, or employee of the agency. This matters because all attorneys owe certain fundamental duties to their clients—such as loyalty, confidentiality, and competency—under the California Rules of Professional Conduct. In the case of your general counsel, their duties are

*Finding a workable balance between the candor required for an effective attorney-client relationship and the limits of a general counsel's ethical duties is challenging but not insurmountable. What is important for everyone is that you and your general counsel approach these issues together, candidly.*

not owed to any individual persons in their individual capacity. They owe such duties to the agency as a whole.

Generally, this means your general counsel will take direction from the agency official or body legally authorized to speak on behalf of your agency under the circumstances. In many cases this will be your agency's board, but in others it will be your general manager or another authorized official. This is another reason why it is important for your general counsel to understand your agency's organizational structure.

It also means there are limitations to the general counsel's duty of confidentiality to any individual person within your agency. As mentioned above, all attorneys owe clients a duty of confidentiality so clients can be candid with their attorneys. Because your general counsel represents the agency as a whole, however, they cannot necessarily promise to always keep communications confidential from others within the organization. In

fact, your general counsel has an obligation to report matters to persons of higher authority in the agency if they learn about conduct likely to result in substantial injury to the agency because it violates the law and could be reasonably attributable to the agency as a whole.

Finding a workable balance between the candor required for an effective attorney-client relationship and

the limits of a general counsel's ethical duties is challenging but not insurmountable. What is important for everyone is that you and your general counsel approach these issues together, candidly.

## Footnotes

- <sup>1</sup> Shareholder, Richards Watson & Gershon and General Counsel, Tri-City Mental Health Authority
- <sup>2</sup> Senior Attorney, Richards Watson & Gershon and General Counsel, Belvedere Tiburon Library Agency and San Franciscoquito Creek Joint Powers Authority