IMLA

Municipal Lawyer

THE JOURNAL OF LOCAL GOVERNMENT LAW

MAR APR 2025 VOL.66 NO.02



Gemini

ChatGPT

Copilot

Grammarly

Understanding and Using Artificial Intelligence for Municipal Attorneys

OFFICERS
President
Jeffrey Dana
City Solicitor
Providence, Rhode Island
President Elect
Susana Alcala Wood
City Attorney
Sacramento, California
Immediate Past President
Rose Humway-Warmuth
City Solicitor
Wheeling, West Virginia
Treasurer
Beth Anne Childs
Town Attorney
Bristow, Oklahoma
General Counsel and Executive Director
Amanda Karras
International Municipal Lawyers Association
Rockville, Maryland
Board of Directors
Chris Balch
City Attorney
Pine Lake, Georgia
James R. Benjamin
County Attorney
Baltimore County, Maryland
Shauna Billingsley
City Attorney
Franklin, Tennessee
Alan Bojorquez
City Attorney
Buda, Texas
Bradford Cunningham
Town Attorney
Pelion, South Carolina
Jeff Dorocak
City Attorney
Las Vegas, Nevada
Brian Loewen
Director of Legal Services
Lethbridge, Alberta
Wynetta Massey
City Attorney
Colorado Springs, Colorado
Paige Mims
City Attorney
Plano, Texas
Morgain Patterson
Director of Municipal Law & Training
Kentucky League of Cities
Lexington, Kentucky
Kimberly Rehberg
City Attorney
Durham, North Carolina
Todd Sheeran
City Attorney
Herriman, Utah
Amanda Stanley
City Attorney
Topeka, Kansas
Jennie Granahan Tarr
Chief Assistant County Attorney
Hillsborough County Hospital Authority
Tampa, Florida
Nancy Thompson
City Counselor
Columbia, Missouri
Randall Van Vleck
Town Attorney
Kirtland, New Mexico
Wendy Walberg
City Solicitor
Toronto, Ontario
Jeannine Williams
Chief Assistant City Attorney
St. Petersburg, Florida

CONTENTS

MARCH / APRIL 2025

FEDERAL IMMIGRATION LAW AND LOCAL AUTHORITY—WHERE IS THE LINE?

By: Amanda Karras, IMLA Executive Director and General Counsel, Rockville, Maryland

The new Administration seeks increased action by local governments regarding undocumented aliens, including communicating their whereabouts and detaining them for apprehension by federal authorities. These policies test the line between federal prerogative and the Tenth Amendment, permissible detainers and the Fourth Amendment, and much more.

PAGE 6

LOCAL GOVERNMENT'S GROWING ROLE IN HOUSING AFFORDABILITY

By: Kevin Ramakrishna, Shareholder, and Joseph Shumow, Shareholder, Reinhart, Boerner, Van Deuren, S.C., Madison, Wisconsin

As housing becomes unaffordable for an ever-increasing number of constituents, municipalities are called upon to do more. Alongside zoning, density changes, and similar local mechanisms, Federal programs--including tax credits and other incentives--can be part of the solution for local governments.

PAGE 12

UNDERSTANDING AND USING ARTIFICIAL INTELLIGENCE FOR MUNICIPAL ATTORNEYS

By: James E. "Jeb" Brown, Senior Counsel, Liebert Cassidy Whitmore, Los Angeles, California. and John G. Peters, Jr., Ph.D. John G. Peters, Jr. & Associates, Henderson, Nevada

Initially perceived by many of us as a vehicle amassing the world's greatest repository of data and content to derive instant answers and more creative writing, AI's transformative potential is now becoming evident. Municipal lawyering will clearly be affected, and IMLA members need to be prepared.

PAGE 18



DEPARTMENTS

22 INSIDE CANADA
Deferral Denied, Housing By-Law Upheld, Trails Protected, and More
By: Monica Ciriello, Director of Municipal Law and Licensing Compliance, City of Hamilton, Ontario
Recent Canadian cases of interest.

26 DAY IN THE LIFE
From BigLaw to MediumLaw to Fulfillment in Local Government Law
By: Avery Morris, IMLA Editorial Staff
Interview with Sofia Hernandez, Deputy City Attorney, Durham, North Carolina

29 SCHOLARSHIPS
Thompson Local Government Law Scholarship Winners
Selected from an outstanding group of future municipal attorneys

32 PRACTICE TIPS
Effective Communication: Pointers for Consulting with a Local Government Client
By: Galen Gatten, Assistant City Attorney – Municipal Law Section Head, City Attorney's Office, City of Arlington, Texas
The fine points of hearing and being heard.

34 MUNICIPAL FINANCE
Bond Basics
By: Debra D. Rosman, Assistant Director of Law, City of Cleveland, Ohio
A fundamental vehicle for local government funding, explained.

STAFF

EXECUTIVE EDITOR	EDITOR	EDITORIAL STAFF	ART DIRECTION AND PRODUCTION	MARKETING
Amanda Karras	Erich R. Eiselt	Avery Morris	Trujillo Design	Caroline Storer

Views appearing in *Municipal Lawyer* are those of the authors. Publication of articles in this magazine does not reflect a direct or implied endorsement of an author's views. © Copyright 2025 by the International Municipal Lawyers Association (IMLA). All rights reserved. IMLA is a non-profit professional association of municipal lawyers from across the United States and Canada, offering its members continuing legal education courses, research services, litigation assistance on amicus briefs and an information-sharing network in the field of municipal law. *Municipal Lawyer* is IMLA's membership magazine, published bi-monthly. For membership information contact: IMLA, 51 Monroe Street, Suite 404, Rockville, Maryland 20850, phone: (202) 466-5424, or e-mail: info@imla.org. Contributions of articles are welcome; email eeiselt@imla.org. *Municipal Lawyer* reserves the right to refuse or edit manuscripts submitted for publication.

PRACTICE TIPS

GALEN GATTEN,
Assistant City Attorney –
Municipal Law Section Head
City Attorney's Office,
City of Arlington, Texas

Effective Communication: Pointers for Consulting with a Local Government Client

INTRODUCTION

When perusing attorney disciplinary notices, two consistent themes emerge, regardless of state or jurisdiction. These are (1) an an attorney's violation of a fiduciary duty or some other type of theft from the client, and (2) the failure of an attorney to adequately communicate with the client. And while both topics could fill an entire ethics book, I hope this article will provide some helpful hints to your practice for effective communication with a local government client.

Tip #1: Know Who Your Client Really Is

Sometimes it can be easy to forget that providing legal representation to a large corporate entity can lead to ethical and practical concerns regarding who the client is, how to effectively communicate with the client, and how to coordinate and seek direction from the client. This can be doubly true when the corporation is a local government entity. The simplicity of representing a natural person and meeting that person at the office or speaking on the phone can seem easy by comparison. How many municipal lawyers know the stress of waiting while a special meeting is called, and a public meeting agenda is posted, and all the time the facts on the ground or the stories on the street continue to change and evolve?

It can be tempting to communicate only with your chief executive, your directors, or even officials or officers directly impacted by an incident or project. This is essential for acquiring information and is a good practice pointer in and of itself. But finding out what happened, whether it be a high-profile matter or a routine item of concern, is only the first step. While collaboration can be productive, you cannot let it color your review of possible options. For example, a city employee or official may only want to discuss a specific option or pursue a particular path. It may be necessary to remind them that your client is the "City" as a whole, not one department, one director, one police officer, or anyone else. Sometimes it's a difficult conversation, especially when as an attorney, you begin to suspect potential conflicts could occur depending on the route the decision-makers choose to take.

Tip #2: Knowledge is Power

How many times are attorneys asked questions in a vacuum? It can be beyond frustrating to answer a question without knowing the whole story. "Don't bury the lead" is a journalism phrase, but it is just as true in our profession. Don't pose a question to an attorney as a hypothetical if it's a real thing happening right now.

The same goes for relaying information. It can be so tempting to answer a question or relate information to one department or one councilmember and forget that its likely that other councilmembers or other departments might be impacted by the same complaint or issue. When possible, relaying the same level of information at the same time is advisable, and will probably save you serious consternation in the future. A simple memo with some basic information and the promise of future updates can save an attorney from complaints by policymakers upset that they were "the last to know."

Tip #3: Don't Forget the Background

As an attorney it is extremely easy to get too close to the subject matter you wish to discuss with your client. Maybe you are explaining a potential settlement agreement for pending litigation. You have lived the case for years. You know the details backwards and forwards. But it's easy to forget that it might not even be on your council's radar. Unless it's a particularly newsworthy event (and has stayed so for months and years), it is probably not something your client thinks about regularly. So, before you start explaining why there is merit to settling a case or not, remember to give the background. Before you can plan to go anywhere, you need to remind the decisionmakers where you have been and how you got here.

Tip #4: Show, Don't Tell

Humans learn information both verbally and visually. Attorneys can get so used to dealing with words, either on the written page or spoken aloud to an audience, that we can sometimes forget the power of images, symbols, and other visual aids. Some of us are old enough

to remember when computers first started making their way into courtrooms and council chambers. It is virtual malpractice to go to court without a laptop or a tablet these days, and the same can probably be said for giving presentations without using some basic graphics to help convey a message or create a lasting impression.

If you have it, use it. Sometimes a short video clip can convey so much more than a verbal description of events. An aerial photograph or drone footage can provide a perspective that makes something much easier to explain to an audience. Sometimes it's just highlighting a key sentence or paragraph in a contract. The use of a thick red circle on a slide showing a wall of text can direct attention exactly where it needs to be. Visuals combined with movement can point eyes to where you need them.

Tip #5: Confidence is Key

No amount of preparation and diligence can carry a presenter who does not demonstrate confidence. Consulting with a governing body requires patience and thoroughness, but also zeal and assertiveness. That is not to mean that a presenter has all the answers, and indeed, it is useful sometimes to admit that there are unknowns that still need to be researched. But a failure to display confidence when addressing a governing body can distort reality and cause an otherwise thorough presentation to seem disjointed or incomplete if the speaker falls victim to self-doubt.

The goal of any consultation with a government client should be three-fold. First, the conveyance of information and ideas. Second, the discussion of options, ranging from one or two to a spectrum of alternatives. And finally, feedback and direction. Questions from a governing body are not a bad thing if they represent engagement and further discussion. Perhaps something is unclear, but often a question can be a prompt for a reassurance. A confident speaker can provide that reassurance by restating a known position or restressing an important point. This restatement can further the feedback process by ensuring a consensus opinion is reached by the governing body. Especially when working with a large body, a consensus is vital to obtaining direction and taking future actions.

Tip #6: Decision Makers are People, Too

It can be easy to forget sometimes that individuals that sit on city councils, zoning commissions, and other deliberative bodies are people. And just like everyone else, their time is limited, and their interests can vary. Making sure they are fully engaged is imperative to effective communication. Your client discussion could be fifteen minutes out of a meeting scheduled for five hours. For the speaker, it's probably the most important fifteen minutes of their day. But for the audience, it is just one out of a series of presentations they need to get through their schedule. As a speaker, you want your presentation to be engaging, factual, transparent, and impactful. If feedback consists of blank stares, it's likely that both the attorney and the governing body will be frustrated by the results.

To consistently keep an audience engaged, it's helpful to remember your tour guide hat. Establish a road map for your audience and keep them on the path you have outlined. The road map for your discussion is best if it is visual and spells out the individual steps that you intend to go through in your presentation. For example, a common roadmap is a time continuum. Begin with the past and explain how we got here. Continue with the present and outline what options are available. Finish with feedback and a discussion about where you go in the future. By telling your client upfront where you are going to take them, they are much more likely to stay engaged and go on the journey with you.

Essentially, people need to know what they are being told, but also why they are being told. Switching from a passive presentation to an active discussion is much easier if the audience knows what to expect and that their direction is required at the end of the presentation.

Tip #7: A Menu of Options

If you have several options, or even if you just have a couple, it's never a bad idea to use easy labels and refer to them throughout the discussion. Do not be afraid to leave up a presentation slide that lists the options out concisely on the screen. Think of your options slide like a menu at a restaurant. It reminds your decisionmakers that they get to choose. They may not want to be in this restaurant, but they do have options. Do they select Option One, Settle? Do they choose Option Two, Litigate? It is useful to anticipate as many options as possible and go through them with the client. Sometimes options are dead on arrival. Sometimes it's clear that your choice has been made already by circumstances beyond you or your client's control. But it helps to have the options listed and easy to follow. Remember,

Continued on page 37



Galen Gatten began his municipal legal career with the City of Midland, Texas, where he was introduced to planning and zoning law. After four years, he left to enter the private sector, but continued his interest in land use by serving six years on the Midland Planning & Zoning Commission. A native of Mesquite, Texas, Mr. Gatten returned to DFW and reentered public service as an assistant city attorney handling open records for the City of Fort Worth. In May 2015, Mr. Gatten became the land use attorney for the City of Arlington. He serves as legal liaison to the Arlington Planning & Zoning Commission and the Zoning Board of Adjustment. In 2022, Mr. Gatten became head of the municipal law section of the Arlington City Attorney's Office. He provides legal advice on planning, zoning, permitting, fair housing, stormwater, and code compliance matters. Mr. Gatten received his JD degree from Texas Tech University School of Law and his BA degree from the University of North Texas. He resides in Grand Prairie with his wife, Stacey, their son Aiden, and their four cats.

Practice Tips *cont'd from page 33*

you are more likely to be disappointed if your client orders something that is not on the menu.

Tip #8: Inject a Reasonable Amount of Emotion

Discussing a legal issue with a client can sometimes lead an attorney to being too objective about a matter. As a counselor, attorneys can sometimes try to be above the emotional turmoil a particular issue presents. It is true this can be very helpful, especially when trying to "read the room" composed of a governing body. But sometimes a little emotion, be it humor or frustration, or even disappointment, can be helpful to show this legal issue has a real impact on officials, employees, vendors, or residents. This is certainly dependent on the matter at hand, the background, the body itself, or the attorney. It needs to be based on real emotion. Faking a feeling is counterproductive and will probably land flat. But suppressing a real feeling may cause others to think they should, too. And nothing engages a client more than feelings of anger, frustration, gratitude, or disbelief. If the emotion is reasonable, it is okay to validate it.

CONCLUSION

Effective communication is not always easy, but it rewards those who persevere. It requires adequate preparation, a predisposition toward teaching others, a willingness to engage on an intellectual and emotional level, and a degree of social intuition. It can seem frustrating when compared to consulting with a single decisionmaker, but often the varied experiences and backgrounds that a collective governing body brings to a meeting with its attorney contributes to a more robust and thorough discussion. And if that is the ultimate result of the consultation, then the government attorney has truly served the city well. ML

Inside Canada *cont'd from page 23*

law was arbitrary or discriminatory, reaffirming that the City has broad legislative authority to regulate local matters. The Court was satisfied that the judge had properly assessed whether the By-law was passed in good faith and concluded that it served a legitimate public interest. The Appellants argued the By-law was *ultra vires* and unconstitutional, claiming it conflicted with provincial and federal law.

The Court disagreed, emphasizing that municipal by-laws should be interpreted as consistent with senior legislation unless a direct conflict exists *Croplife Canada v. Toronto*, 2005 ON CA 15709. The Appellants failed to demonstrate that any provision of the By-law contravened or contradicted the Charter or other provincial statutes. Further, the Court noted that municipalities have broad discretion in how they implement policies, including phased rollouts such as pilot projects. The By-law's selective application to certain wards did not render it invalid. As the application judge found, there was no evidence to support the Appellants' suggestion that the pilot project improperly targeted student housing. Since the Appellants did not establish any legal basis for quashing the By-law, the appeal was dismissed.

Court Upholds City's Right to Protect Public Trails

Melson v. Kawartha Lakes (City), 2025 ONSC 752 https://canlii.ca/t/k98gw

The Applicant owned property adjacent to the Victoria Rail Trail (Trail), a recreational corridor maintained by the City of Kawartha Lakes (City). The Applicant operated a peat extraction business that required industrial trucks to cross the Trail. However, the entrance he used was unauthorized by the City, creating safety risks for pedestrians, cyclists, and snowmobilers using the Trail. The Applicant continued to use the unauthorized entrance, despite multiple demands from the City to cease. In response, the City commissioned a land survey in 2019 to confirm property boundaries and, in 2020, installed concrete bollards to block access. The City maintained that the Applicant had a lawful access point via Superior Road but was not using it. In 2021, the Applicant filed an application seeking a declaration that the bollards trespassed on his property and an injunction for their removal. However, the Applicant failed to properly file or serve his application materials, leaving the Court to proceed based on the City's evidence.

HELD: Application dismissed.

DISCUSSION: The City's land survey confirmed that the bollards were placed entirely on public land. The Applicant provided no survey evidence to support his trespass claim and later shifted his argument, asserting a prescriptive easement over the Trail. To establish a prescriptive easement, an Applicant must show continuous, uninterrupted, open, and peaceful use for at least 20 years without permission. However, aerial photographs demonstrated that the entrance point used by the Applicant did not exist before 2013, failing to meet the 20-year requirement. Additionally, the City had issued Trespass Notices in 2018 and blocked access in 2020, further breaking any claim of uninterrupted use. The Court held that while it dealt with this application on its merits, but was also satisfied that the application was moot, as the Applicant had lost possession of the property due to a mortgage default, and the mortgagee had consented to the bollards remaining in place. Application dismissed. ML