IMLA

Municipal Lawyer

THE JOURNAL OF LOCAL GOVERNMENT LAW

MAY JUN 2023
VOL.64 NO.03

COMPELLED SPEECH: YOU CAN'T MAKE ME SAY THAT



OFFICERS
President
Lori Grigg Bluhm
City Attorney
Troy, Michigan
President Elect
Rose Humway-Warmuth
City Solicitor
Wheeling, West Virginia
Immediate Past President
Barbara A. Adams
General Counsel
Illinois Local Government Lawyers Association
Treasurer
Jeffrey Dana
City Solicitor
Providence, Rhode Island
General Counsel and Executive Director
Amanda Karras
IMLA, Rockville, Maryland
BOARD OF DIRECTORS
Christopher Balch
City Attorney
Brookhaven, Georgia
Shauna Billingsley
City Attorney
Franklin, Tennessee
Alan Bojorquez
City Attorney
Bastrop, Texas
Beth Anne Childs
Town Attorney
Bristow, Oklahoma
Diana Cortes
City Solicitor
Philadelphia, Pennsylvania
Bradford Cunningham
Municipal Attorney
Lexington, South Carolina
Arthur Gutekunst
Sr. Assistant Corporation Counsel
White Plains, New York
Nina R. Hickson
City Attorney
Atlanta, Georgia
Lori Lein
General Counsel
Alabama League of Municipalities
Wynetta Massey
City Attorney
Colorado Springs, Colorado
Paige Mims
City Attorney
Plano, Texas
Kimberly Rehberg
City Attorney
Durham, North Carolina
Bryan Scott
City Attorney
Las Vegas, Nevada
Todd Sheeran
City Attorney
Herriman, Utah
Jennie Granahan Tarr
Chief Assistant County Attorney
Hillsborough County Hospital Authority
Nancy Thompson
City Counselor
Columbia, Missouri
Randall Van Vleck
Town Attorney
Kirtland, New Mexico
Wendy Walberg
City Solicitor
Toronto, Ontario
Byron Werry
City Solicitor
Regina, Saskatchewan
Jeannine Williams
Chief Assistant City Attorney
St. Petersburg, Florida
Susana Alcala Wood
City Attorney
Sacramento, California

CONTENTS / MAY / JUNE 2023

COMPELLED SPEECH: YOU CAN'T MAKE ME SAY THAT
By: Aimee Alcorn-Reed, Assistant City Attorney, Corpus Christi, Texas
The First Amendment unreservedly protects the individual's freedom to speak, among other prerogatives. But it equally girds the right to refrain from expressing messages with which one disagrees--whether in the form of a schoolroom pledge, a license plate slogan, an oath of office, or elsewhere.
PAGE 6

REMOVING AND BANNING INDIVIDUALS FROM PUBLIC PROPERTY
By: Michael Koss, Deputy City Attorney, Overland Park, Kansas
Whether local governments have the right to remove disruptive persons from a particular location depends on a number of factors, including the extent of the disruption and the forum involved. Regardless of the circumstances, removal triggered by the content of the disruptive expression will be problematic
PAGE 10

MANAGING RISK BY EMBEDDING MENTAL HEALTH CO-RESPONDERS IN POLICE DEPARTMENTS
By: Douglas Hoffer, Deputy City Attorney, Eau Claire, Wisconsin and Jasmine Dutton, Administrative Associate, Eau Claire, Wisconsin Police Department
With ever-increasing frequency, law enforcement is called to scenarios involving the mentally ill--an environment where officers often lack the necessary training and experience. As evidenced in numerous programs around the country, embedded mental health professionals can play a vital role, helping to avert tragic outcomes.
PAGE 16

DEPARTMENTS

20 NEW LAWYERS
Getting Your Boss's Job: Tips on Ascending to the City Attorney Position
By: Andy Segovia, City Attorney, San Antonio, Texas
Insights and advice for law department success.

22 AMICUS
"Continuity of Government"- the Virginia Supreme Court's Minimalist View
By: Amanda Karras, IMLA Executive Director and General Counsel
A zoning ordinance adopted via electronic meeting is declared void.

24 LISTSERV
A Tale of Two Cities
By: Brad Cunningham, Municipal Attorney, Lexington, South Carolina
Columbia and Charlotte—differing trajectories.

26 MID-YEAR SEMINAR
A Look at the 2023 Meeting in DC
IMLA lays a wreath, salutes amicus award winners, and hosts 400 colleagues.

32 INSIDE CANADA
Delaying Tactics, Redacted Documents, Single-Vote Recounts, and More
By: Monica Ciriello, Director of Municipal Law and Licensing Compliance, City of Hamilton, Ontario
Recent cases of interest.

STAFF

EXECUTIVE EDITOR Amanda Karras
EDITOR Erich R. Eiselt
ART DIRECTION AND PRODUCTION Trujillo Design
MARKETING 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 2023 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. It offers 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.

NEW LAWYERS

ANDY SEGOVIA,
City Attorney,
San Antonio, Texas

Getting Your Boss's Job: Tips on Ascending to the City Attorney Position

Lawyers new to the practice of municipal law are wise to begin focusing and planning their career path now. I wish I had given it more thought early in my career, which itself has taken unexpected twists and turns. Too often we fall into the trap that we can focus on these things later but there is no better time than the present. This article is intended to give new lawyers some practical guidance for their career and professional development.

1. Understand the organization's culture.
Every city, county, and governing body has its own unique culture and approach. Also, the communities they serve have varied histories and face different and unique challenges. It is important to try to understand the culture of your organization and the rich history of the area you are working in. Very often historical events and trends impact the perspective on current issues facing the organization. Work towards maintaining and even augmenting those parts of the organizational culture that help you develop professionally and help the organization succeed. For example, always encourage collaboration and teamwork. For those things that do not help the organization, think about how you can be a change agent to help it move to be a more productive and sustainable organization. As an example, work to break down silos that deter from effective cross department communications.

2. Understand your supervisor's leadership style.
Everyone has a different leadership style. Work to recognize that style and then manage your own work so that it fits the leadership style. Some leaders drive for consensus among the team, while others are more data driven and make decisions after careful review of pertinent information. Some leaders want to be more involved in decision making, while others give their managers more latitude and expect decisions to be made at the appropriate level. No matter what your supervisor's style, try to understand it, and adjust your efforts so that you can be effective. If your supervisor favors a data driven approach, then make sure you provide the pertinent data and analysis to facilitate decision making. Also look to fill gaps in areas where your supervisor is not as strong. For example, I let my team know I am not the best at organization or attention to detail and I am very appreciative when team members focus on those areas as we deliver legal advice to the organization. Every leader has their strengths and weaknesses. Work toward leveraging the strengths and filling in the gaps in the weaknesses.

3. Work well with your clients and colleagues.
I have found that your success is very much tied to the success of your clients and your colleagues. Too often people work toward managing up with an unhealthy focus on impressing the boss at the expense of supporting clients and colleagues. Helping a client accomplish their mission is key to being viewed as a value-added member of the organization. Helping colleagues working on challenging projects will add to your reputation as a team player. Promotional decisions are not made in isolation. Input is received from clients and colleagues and their input plays a significant role in professional evaluations. In short, the more you support and complement others, the more it helps with your development and career advancement.

As you give legal advice do not default to "no." Many risks are clearly avoided by just saying "no" but many opportunities for the organization and the community are lost if we always default to "no". Your clients are trying to accomplish stated missions and objectives that are important. Risk is always at play. Look for ways to mitigate risks to help them accomplish their mission. Instead, suggest "yes, but let's try doing it this way instead." It is important to be viewed as a trusted advisor and not a hinderance. There is almost always a solution you can come up with working together with colleagues and clients. In San Antonio, we teach our staff that the only time we say "no" is if the proposed activity is 1) illegal, 2) unethical,

or 3) enterprise threatening (e.g., allowing drag racing downtown). For anything outside of those three situations, we always try to work with our clients to implement programs and initiatives that entail manageable risks.

4. Leverage your strengths and expertise but be open for learning opportunities.
You may have a unique skill set or knowledge, do not be afraid to raise your hand and share it. Always leverage your strengths and expertise whenever a unique project comes up. The most rewarding projects I have worked on have been those of first impression for the organization. Major projects I have worked on include housing programs in Mexico, theme park sponsorships, branded credit card issuance, and river tour agreements. None of those fit into a particular practice. In situations where you may not have the expertise, view a challenging project as a learning opportunity to gain new skills or experience.

5. Always question "we have always done it that way."
I have found some of the lowest hanging fruit in terms of helping an organization become more effective and efficient can be found by asking why things are done a certain way. There may be excellent reasons why a program or process was started but those factors are not static. You may find that no one has revisited it since it was first created. You can make a real difference by taking a new, fresh look at things like forms, waivers, and similar boilerplate documents. Always ask why we are doing it that way and if the answer is "because we have always done it that way," then that is a good sign it is a non-value-added step. Every process or form should bring real value to the organization.

6. Always use crisp, concise, plain communications.
Your clients and leadership probably do not have time to read a multi-page document with case citations. They have time for an email or one-pager that simply answers their question with yes, no, or maybe. You can use the next three or four paragraphs to explain why your answer is a yes, no, or maybe. If the client or recipient of your email needs more information, then offer to provide it to them or to meet with them.

I have found that lawyers get into the habit of supplying more information than is needed. We do not need to fill the "blue book" anymore (I am probably dating myself). Remember that your client needs advice quickly and that communications need to be clear and concise. If they want case citations or a more in-depth analysis, then you can always follow-up. More often than not the client will appreciate the leaner communications.

7. Productive feedback.
This is a very hard thing to do and there are resources outside of this article that can help you. What I have found to be most effective in my career is to make sure that the feedback is timely and to the point. If someone does a great job, then let them and the team know that right away. If there was something they could improve on, then highlight that to them individually and give them the resources to improve. Performance needs consistent calibration rather than dramatic shifts. Provide feedback to your leadership team. A lot of times our leaders and colleagues are also under the same time pressures. A good leader will welcome your insight.

8. Be patient … to a point.
All of us expect that once we reach a certain skill and experience level, then we will go up the career ladder. That does not always happen. I have had to be patient myself. But leaders change, situations change, and opportunities always come up.

However, if it gets to the point that you really do feel you have hit a standstill or that your career is taking steps back, then come up with a plan. If you are not getting the promotion or development opportunities that you deserve, then think of how you can change that. You can look within your organization but outside your department, or maybe to another city all together. One of the advantages of working for a larger city is that career opportunities present themselves on the client side. We have had attorneys leave the City Attorney's Office for other city departments. Some thrive in their new roles and others later bring back their valuable experience to the legal department. Be patient but recognize that we have limited time in our career to make meaningful contributions to our community and to our profession.

I commend all new lawyers that are giving their talent and expertise to better their communities. Think about where you want to be in the next three to five years and create a plan. Check-in on your plan from time to time to watch for progress, and always have a Plan B. ML



Andy Segovia has practiced law since 1990, serving for 25 years as a senior legal executive with General Motors in Detroit before becoming the City Attorney for his native San Antonio in 2016. He is a member of the City's Executive Leadership Team overseeing the City Attorney's Office and the Diversity, Equity, Inclusion & Accessibility Department. He received a BA in Government Studies from the University of Notre Dame, an MPA from Texas A&M University, and a JD from the University of Texas at Austin.