

ANNUAL REPORT

CORPORATION COUNSEL



PRESENTED TO:

**OTTAWA COUNTY BOARD OF
COMMISSIONERS
MARCH 2018**

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OTTAWA COUNTY CORPORATION COUNSEL OFFICE

This is the 2017 annual report to the Ottawa County Board of Commissioners of the Ottawa County Office of Corporation Counsel.

I. Introduction

Since 2017 was a year of change in this position, I thought it would be helpful to undertake a different format for our report this year. Because the Socratic method is valued in the law for its tendency to engage participants in the subject matter and one of my stated goals for this Office is to get it ready for my eventual replacement, I thought I would use the question and answer format to stimulate thought and eventual interaction—I hope—among the stakeholders in this Office as to what they would like to see it become in the near and long term.

II. Who is the client?

On its face, the answer to this question seems simple—“Ottawa County.” But this is one of those questions where the more you think about it, the more complicated it becomes. There is an example of what I am talking about in President Trump’s apparent view of Attorney General Jeff Sessions’ role as Attorney General of the United States. I am not being critical or political here, but the interesting thing about the President’s view is the obvious logic behind it; namely, that since he appoints and can fire the AG and the AG is part of his Cabinet and Administration, the AG’s “client” should be the President. Under this thinking, the client of the Office of Ottawa County Corporation Counsel would be the County Administrator who oversees the Office’s functioning and/or the County Board of Commissioners who appoints the office holder.

In my opinion, this is too narrow a view. In my role as corporate counsel for private companies, I have sometimes had to be involved in investigating the CEO's conduct and sometimes even been involved in firing the CEO. Moreover, I sometimes have had to support the CEO in trimming back the role of an intruding board of directors.

On the other end of the spectrum, to say that the Ottawa County taxpayers are the client is too broad. Often, this Office takes action against individual taxpayers, sometimes even taking their property away.

My view is that Corporation Counsel's client is Ottawa County the municipal corporation, its departments, its funding units, its associated boards and its elected officials, officers, and employees in their official functioning. In short, my fiduciary duties are to the operation of the County in all of its official capacities.

III. Who can request Corporation Counsel's advice or services?

Again, the quick answer is that the Board of Commissioners through approved policies and the County Administrator, through his or her oversight of the Office, are the official gatekeepers of this Office.

However, it is worth noting that I first became involved with Ottawa County in 1982 when the County hired the law firm in which I was a young associate to represent the County Board of Commissioners in disputes with the County Clerk and with the Probate Judge. Ottawa County had no office of Corporation Counsel at that time, since the Office was not formally created until 2000. Each of those cases ended up in litigation where the County taxpayers paid for both sides of the dispute and each was decided in published opinions in Michigan's appellate courts—the dispute with the Clerk ending up in a seminal, published opinion of the Michigan Supreme Court.

If Ottawa County had an Office of Corporation Counsel in the early 1980's and if that office holder had credibility as the attorney for the *entire* entity and its officers, not just beholden to those appointing him or her, I would like to think that there would have been at least a fighting chance that Corporation Counsel could have mediated the disputes to avoid the expense and ugliness of litigation. If the client is truly the "corporation" and my fiduciary duties are to the entity and its officials in their official capacities, then I need to make sure that my legal opinions are faithful to that duty and not just influenced by who controls my paycheck.

In my opinion, when the Office is functioning in a healthy way, any elected official, department head, or county employee should be able to walk into my office, shut the door and ask to speak to me confidentially. My response to that request should be that I can respect that request but only to the extent it is consistent with my fiduciary duties to the official functioning of the County. I am not any official or employee's individual attorney. I am not *per se* the Board's or County Administrator's individual attorney. I am a possible vent for conflict, a check and balance on potential officer misfeasance, malfeasance or nonfeasance, and a sounding board for questions or concerns about how any office, department or operation can or should function.

Accordingly, I think the answer to this question is that anyone in the County family should be able to request Corporation Counsel's services. I may and should have to clear some activities in advance with the County Administrator and, perhaps even the Board of Commissioners, depending on their nature and the potential for internal conflict, cost and inconsistencies, but keeping that door open and promoting the credibility of the Office are very important to the effective functioning of the Office—at least in my experience and opinion.

IV. What does Corporation Counsel do?

The primary four tasks of Corporation Counsel—in order of importance—are (1) to ensure that the County and its officers are fulfilling their legal duties and are acting in a lawful manner; (2) to minimize the liability (or unintended consequential costs) of the corporation, (3) to serve as the overall coordinator for legal compliance with FOIA, HIPPA, and various other federal and state statutes and in a related manner, to ensure that public information, contracts, licensure and official documents meet professional and common law standards, and (4) generally to promote the better functioning of county government.

Towards those ends, I research and prepare legal opinions; offer legal advice in person, over the phone or via e-mail; review, revise and develop contracts (over 500 in the course of a year); draft resolutions, ordinances and other formal legal documents for boards and departments; and prepare communications to third parties, including FOIA answers, claim demands, claim denials, and official responses; handle some litigation matters for the County, such as representing CMH staff in administrative service hearings and the Treasurer in tax foreclosure proceedings, and oversee the activities of other lawyers working for the County, including litigation defense, labor relations, real estate and bond counsel. This Office also serves as the general counsel for the Ottawa County, Michigan, Insurance Authority, and occasionally handles other corporate affairs for the Building Authority, WMET and other affiliated county operations and authorities.

V. What additional things should Corporation Counsel be doing?

At least three things come to mind. First, I would like to initiate internal meetings with the judges, elected officials and department heads to establish relationships, build the credibility

of the Office and solicit areas in which the Office could better serve their operations. Communicating with the corporation counsel in other counties is another form of outreach in which the Office could and should engage. For example, I am hoping to work with Kent County's Corporation Counsel's Office so that we can provide a joint recommendation on participation in the opioid lawsuits. I would also like to reach out to municipal and in-house corporate attorneys of private and public sector entities within Ottawa County to facilitate better ways of serving our respective clients and the greater community we are all building in this special place. I have already contacted Herman Miller's general counsel, to make sure that he has a contact within Ottawa County's municipal structure in the event Herman Miller, as a substantial contributor to Ottawa County's economy, were to need assistance in navigating its way through county operations.

Second, the Office of Corporation Counsel clearly needs to become more institutionalized. Ms. Olson, the Office's Administrative Assistant, last year organized hundreds of digital files of the Office into subjects and departments. We are in the process of collecting hard paper copies of all County ordinances and official plans, such as the 911 Plan and the Solid Waste Management Plan, so that the Office is an additional repository to the County Clerk's office for a variety of official legal documents. While it would be impossible for the Office to maintain all contracts, all "political" contracts, such as road patrol service agreements between the Sheriff's Department and local units of government and all "organizational" contracts such as the intergovernmental agreements creating the Insurance Authority or Central Dispatch Authority should be accessible through the Corporation Counsel's office.

Finally, we hope to better organize and retain all legal opinions that the Office has issued and all correspondence in which it has engaged, for purposes of posterity, efficiency and also as back up to the departments or offices for which it was written.

As a third area of expansion, I would like to see the Office provide some education to county employees on various legal topics. This would be a form of risk management as well, since lawyers have divined principals regarding report writing, record-keeping, note taking, video and voice recording, writing confirming letters and other activities with legal ramifications where a little practical tutoring can improve performance and at the same time protect against liability claims. Explaining basic legal concepts such as negligence, gross negligence and governmental immunity likewise promotes liability awareness in county employees, which also can also improve job functioning and protect them and the County against legal exposures.

VI. Conclusion

I have thoroughly enjoyed my first year in this new capacity. I greatly look forward to the day that I can fully transition from my private legal practice to full employment status with Ottawa County.

In the meantime, I greatly appreciate your trust and confidence and the opportunity to serve Ottawa County's elected officials, officers, employees and departments before problems surface, instead of only after a claim has arisen or a lawsuit filed. I enjoy the character, capabilities and commitment of my co-workers and the elected officials of this entity, and am proud to contribute in this new, more meaningful way to one of the most respected county operations in Michigan.

I also firmly believe that by fulfilling the Office's many roles, I am providing value to the great residents and taxpayers who make this corporation possible and inspire our mutual service.

Respectfully,



Ottawa County[®]

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