

# Eureka Township

## **Attorney Engagement Policy**

### Attorney Engagement Purpose

Township officers are frequently forced to make tough decisions on how to properly assess and resolve business brought before them. Drafting and enforcing Ordinances, drafting findings-of-fact, annexation issues, right-of-way disputes, open meeting law questions, conflicts of interest, and permit requests are just a few of the many issues that the Township faces on a regular basis where using the services of a qualified attorney is of significant assistance. It is, therefore, important for Eureka Township to establish a relationship with an attorney who can serve as the Township's attorney. This policy is intended to guide the appointment, use/engagement and evaluation of attorney services for the Township.

Legal services are costly, but they are an important part of doing Township work correctly and efficiently. Establishing a relationship with an attorney or group of attorneys will pay off for the Township overall.

### Township Attorney Contact Appointment

1. During the Reorganization meeting, an attorney contact shall be appointed to facilitate and ensure adherence to this attorney engagement policy.
2. In an effort to maintain consistency in communication with the attorney, a secondary attorney contact shall be assigned to perform any and all responsibilities of the attorney contact should the primary contact be unavailable. The secondary contact shall be the Chair, or Vice-Chair should the Chair be designated the primary contact. It shall be the sole responsibility of the primary and secondary contacts to be in communication of communications with the attorney. Communications must be done in a manner consistent with the open meeting law. The secondary contact shall be available should the primary contact be unavailable or unable to address an attorney request.
3. It shall be the sole responsibility of the attorney contact to:
  - a. Communicate attorney assistance requests in specific matters with the appointed attorney and provide needed information with the assistance of the Clerk.
  - b. Ensure all communications with appointed attorneys are copied to the Clerk and the Town Board as appropriate. The Planning Commission may be copied as appropriate.

- c. Report to the Board on a monthly, or as-needed basis, the status of all currently pending attorney and legal matters currently engaged with the appointed attorney or any other counsel engaged on the Board's behalf. This includes counsel appointed by Township insurance for legal action brought on the Township.
- d. Initiate special meetings as required for current legal action or when immediate action is required outside of actions provided in this policy.
- e. Engage appointed attorneys as provided by this policy.

### Attorney Appointment

1. Attorney appointments should be made and/or reviewed on an annual basis. Appointments (engagements) should be made to coincide with the elected term of the Board that will engage the attorney. The current Board terms start April 1<sup>st</sup>. Appointments should be made, and engagement letters accepted within the first month of service of the elected Board.
1. If the current retained attorney will not be renewed; the Clerk, with the assistance of the appointed attorney contact should work with the current firm and newly appointed firm to ensure the transfer of Township records.
2. Possible firms should be solicited based on prior experience, recommendations from surrounding communities (consider conflicts of interest) or from the Minnesota Association of Townships (MAT). The solicitation process should be assigned to no more than two Supervisors to make general inquiries and present general information to the Board.
3. The Board shall determine which firms are of interest and schedule an interview. When considering an attorney, the following factors should be considered to determine whether or not an attorney is right to hire.
  - a. Experience and Legal Skills:
    - i. Has the attorney ever represented a municipal client?
    - ii. Does the Township have any pending projects or special goals it hopes to achieve?
    - iii. Can references be obtained?
    - iv. If representation in court may be necessary, what experience does the attorney have, and what is his/her philosophy regarding settling a case vs. litigating it?
    - v. What type of access does the attorney have to legal resources?
  - b. Accessibility:
    - i. Where is the attorney located?
    - ii. How, and when, can the attorney be reached?
    - iii. How many other clients does the attorney have?

- c. Billing:
  - i. What is the hourly billing rate?
  - ii. What triggers a billable event?
  - iii. Is there a separate charge for the work of paralegals or others assisting the attorney?
  - iv. What “extra” fees are involved?
  - v. Would a retainer make sense?
  - vi. What cost saving techniques does the attorney use?
- d. Miscellaneous:
  - i. What kind of personality does your Board work best with?
  - ii. What role does the Town Board really want the attorney to play?
  - iii. What potential conflicts of interest exist, and how does the attorney identify and deal with potential or actual conflicts?
  - iv. Does the Town Board have any strong feelings about a larger firm, a smaller firm, or a sole practitioner?
  - v. Pose a hypothetical to the attorney and see how it is dealt with. This is an excellent way to gauge the attorney’s approach and interaction with the Town Board.

### Engagement Letter

1. An engagement letter must be obtained to clearly define the legal relationship (or engagement) between the attorney and the Township. This letter must state the terms and conditions of the engagement, principally addressing the scope of the engagement and the terms of compensation for the attorney.
2. Most engagement letters follow a standard format. The following sections are a representation of items which should be outlined in the engagement letter.
  - a. Terms of service.
  - b. Limitations on liability.
  - c. Ownership, use of materials, and attorney work product.
  - d. Billing and retainers.
  - e. Termination of service.
  - f. Issues of independence and conflicts of interest.
  - g. Dispute resolution provisions.
  - h. Other practical guidance.
3. The engagement letter or attachment to the engagement letter should include a defined interval for attorney evaluation. This may be driven by completion of a particular matter, periodic evaluation or at a minimum, a yearly evaluation.

## General / Working Engagement Policies

1. General policy for working with an attorney:
  - a. Involve the attorney early on in the process. The earlier an attorney becomes involved in an issue, the easier it will be for him/her to help guide the Township down the best path to avoid legal trouble after the fact. Further, seeking advice early can save both the embarrassment and legal difficulties of discovering a problem and trying to undo what has already been done. This can also be a cost-saving factor as the Township will not have to pay the attorney to be brought up to speed on an issue or to undo what was already done.
  - b. Keep the attorney informed. As the Town Board makes its decisions, and as new facts emerge or conditions change, the attorney needs to be informed so that he/she can provide the best advice possible based on the most current information.
  - c. Share all information in an honest and neutral manner. The attorney's advice can only be as good as the information it is based upon.
  - d. Give the attorney time to do needed research. Demanding "on-the-spot" answers can be embarrassing and lead to bad advice. Similarly, waiting until the last minute can result in incomplete research and only a partial answer being available.
  - e. Do not overwork the attorney. While it is better to be safe than sorry, not all questions need to be posed to the attorney and not all documents need to be read by the attorney. Calling the attorney with every minute issue will result in excessive costs for the Township and frustration on behalf of the attorney.
  - f. Remember you are not the attorney's only client. While a township should expect its attorney to be responsive, it is unrealistic to expect him/her to be sitting at his/her desk just waiting for your call, or that he/she will be able to stop working on another file to provide the Township with an immediate reply.
  - g. Keep the attorney informed of general goals and objectives, as well as things that occur or are about to occur in the community. This is particularly helpful for attorneys that reside outside of the Township.
  - h. Address concerns or problems about the services being provided before they get out of control. Misunderstandings about expectations, billings, etc. can be a source of frustration to both the Township and the attorney; however, if both parties discuss such issues as they arise, solutions are easier to find.
  - i. All communications to the Attorney should originate with the Clerk. The Clerk will copy the liaison on all communication with the Attorney.

2. Policy for engaging an attorney:

a. Agenda engagement.

- i. Upon review of a published agenda, the attorney contact, at their discretion, can request the presence of the appointed attorney to appear at the associated meeting to represent the Township in the matter.
- ii. These matters should be items that are: unclear based on the information provided in the matter, contentious in nature, or have a reasonable expectation that the decision will be legally challenged.
- iii. A request for attorney representation for a specific matter may come at the written request of a Board Supervisor, Planning Commission member or Clerk. All requests must be evaluated by the attorney contact as to meeting the needs of attorney presence. If the Town Board or Planning Commission feels that attorney presence is required and has not been requested by the attorney contact, it may determine to table the matter and seek attorney presence through Board action.
- iv. After determining the need for attorney presence, the attorney contact shall notify the Clerk to inform the Town Board and Planning Commission that attorney presence has been requested for the specific meeting.

b. Board-directed engagement.

- i. The Town Board, by majority, may determine to engage the appointed attorney in any matter deemed appropriate by the Board's action.
- ii. The matter should be clearly communicated so the attorney contact can refer the matter to the appointed attorney.

c. Litigation engagement.

- i. Should the Township be served legal notification requiring legal representation, the attorney contact shall be notified and forward the matter to the insurance provider and make the appointed attorney aware of the action. The Town Board shall be copied on any such matter in compliance with attorney-client privilege.
- ii. The attorney contact, based on the feedback of the insurance provider as to coverage in the matter shall engage the insurance-appointed attorney or engage the Township-appointed attorney if coverage is not provided. The Town Board shall be copied on the determination of coverage.
- iii. The attorney contact shall work with the assigned attorney in the matter to establish communication and initiate meetings as required.

## Attorney Evaluation

1. After the completion of a particular project, or at set intervals as defined (minimum of an annual evaluation), the Township should consider the following evaluation points:
  - a. Are we getting the service we expect?
  - b. Are we satisfied with what we are paying?
  - c. Are there any issues that need to be addressed?
2. Annual evaluations should be made prior to the completion of the elected year so that the evaluation can be made by the acting Board that has had experience with the currently engaged attorney.
3. Review of the questions used during the appointment process should serve as a starting place for evaluating satisfaction with the legal services the Township is receiving.
4. After completing the evaluation, feedback should be given in written form along with a verbal discussion with the attorney. This review of the evaluation should be completed by the attorney contact or full Town Board as determined during the evaluation.