

From: James Moore [james.moore@moorelawok.com]
Sent: Monday, June 27, 2016 2:56 PM
To: O'Meilia, David
CC: Patrick Stephens; Mark Secrist
Subject: RE: Communications with City officials

David,

Thanks for the response. We have been doing business with Tulsa for many years, and many other cities as well, where the labor-management practices get ingrained and everyone knows when and when not to get legal counsel involved. What you have outlined here is a part of the communications we have with City officials. There are many more in the course of regular representation of officers from the Chief on down to first line supervisors in interviews with officers. And that is only in the Police Department.

We have frequent contact with HR about pending grievances, hearings at various steps, and discussions leading up to arbitration cases. The CBA's require those steps in most instances. We request documents necessary to the representation process and email about pending issues. I have just begun to think about all the ramifications of your position and how much we need to change, or clarify before we can move on most of the things pending with the City.

I think it would also be a good idea on your end to discuss this with Chief Jordan and Joyce Powell since they, or their departments, are frequent points of contact in labor matters. It would not be too burdensome for us to copy you on emails or correspondence in our contacts but phone calls and meetings could prove to be very complicated.

At the present time I am not comfortable doing any business with the City, outside of what you have described in your email, unless we can have you assign someone to be involved, or waive that obligation in specifically defined circumstances.

Jim Moore

From: O'Meilia, David [mailto:DOMeilia@cityoftulsa.org]
Sent: Monday, June 27, 2016 9:41 AM
To: James Moore <James.Moore@moorelawok.com>
Subject: RE: Communications with City officials

Mr. Moore,

Jim Twombly, Gerry Bender and I have met and discussed the situation in great detail. Initially, I again point out that the unauthorized communication at issue was with Mayor Bartlett, not Mr. Twombly, and dealt with substantive legal issues. There is some disagreement as to what constitutes "away from the table" substantive versus non-substantive communications, however, the City does not think it is helpful, toward clearing up the broader issue for the future, to debate any contentions in that regard. In examining the matter, it appears that the approximately seven years of substantial recurring interaction

between you and Mr. Twombly, each of you being the lead negotiators for the parties in the TPD bargaining unit negotiations with the City, over time has resulted in informal communications about the subject matter of the negotiations and negotiations process between you two that occurred without the knowledge or permission of the City Attorney or an appropriate attorney from my Office.

The City believes this matter/issue can be resolved by answering the questions posed in your email, below. You ask: 1) "Are you suggesting that in the normal course of such contract negotiations that because I am a member of the bar I should conduct that business through an attorney?" and 2) "does your interpretation hold true for any lawyer who would discuss any contract issue with Mr. Twombly?"

The answer to your first questions is "No." Rule 4.2 specifically prohibits such communication absent "the consent of the other lawyer or is authorized to do so by law or a court order." Therefore, if you have specific consent from the City Attorney or an appropriate Legal Department staff attorney to have direct communications with a City official regarding certain bargaining unit issues, you would not need to conduct that business "through an attorney." The wording in Rule 4.2 was changed a number of years ago from "party" to "person" to emphasize that the prohibition as to certain communications with a represented person applies outside the litigation context, and applies to attorneys in business, transactional, contract, and settlement negotiations contexts, all for the purpose of protecting represented persons against possible overreaching by lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounseled disclosure of information relating to the representation. For purposes of Rule 4.2, if there is no consent from the represented person's attorney, it is simply not relevant that the person (here, a City official) initiated or consented to the call, email or communication, or that any advice given is impartial, the "opposing" attorney's participation in the communication is a violation of the rule. As applied to governmental entities, an attorney must obtain the consent of the government lawyer prior to communicating with a government officer, director, department head, or manager, as well as employees who are directly involved in the "matter." The bar extends to public officials or government employees whose acts or omissions may be imputed to the governmental entity. Obviously, to the extent necessary to afford your client(s) proper legal representation, this bar is not applicable to the FOP and its individual members in your direct representation of them as clients. Therefore, the answer to your second question is that any lawyer, representing him/herself or a client, who wishes to discuss **City-related** contract issues with Mr. Twombly, must have the consent from me or a staff attorney from my Office to communicate with a City official.

We believe that the simple and clear resolution of the matter as to your representation of the Tulsa FOP, both as their attorney and as lead FOP negotiator, is to provide limited consent and specify the scope thereof. Other than that hereafter specified, there is no consent accorded with regard to any City official except upon consideration of your specific request. As City Attorney, you have my consent to discuss Tulsa FOP matters, including in formal negotiation sessions, with Mr. Twombly in the presence of a staff attorney from my office who is present to provide advice on the subject(s) of the communications. In formal negotiating sessions only, this consent would extend to the Chief of Police and any other City representative present at a particular formal session. If other communications by you are to Mr. Twombly regarding FOP matters are by telephone, a Legal Department attorney must be on the phone call. All mail and fax correspondence from you to Mr. Twombly regarding FOP matters must be cc'd to me or to my Litigation Division Manager Gerry Bender or the designated attorney from the Litigation Division involved with the specific matter or issue. You likewise have my consent to communicate by email with Mr. Twombly on such FOP matters regarding notification, coordination, scheduling and "proposals and counter proposals," provided those emails are also cc'd concurrently to

my Litigation Division Manager Gerry Bender or the designated attorney from the Litigation Division involved with the specific matter or issue. At the present time, the primary points of contact in Office for bargaining unit matters are Litigation Division Manager Gerry Bender and Assistant City Attorney Grant Lloyd. If there is an emergency cancellation of a scheduled meeting or negotiating session, you have my consent to get hold of the Mr. Twombly directly by telephone, without the necessity of counsel being on the phone call, to let Mr. Twombly know of the cancellation and the reason therefor.

We have attempted to cover all potential situations regarding the matter/issue. If you have any questions or suggestions in this regard, please let me know.

Thank you for your consideration in this regard.

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From: James Moore [<mailto:James.Moore@moorelawok.com>]
Sent: Monday, June 20, 2016 5:21 PM
To: O'Meilia, David
Subject: RE: Contact with City officials

Mr. O'Meilia,

I am still not clear on the position you are taking for the City. In all past contract negotiations I have had phone and personal conversations with Mr. Twombly about substantive contract matters. I have sent him emails with proposals and counter proposals in them and received similar emails from him. Our communications away from the table have not been about merely non-substantive or coordination issues. Are you suggesting that in the normal course of such contract negotiations that because I am a member of the bar I should conduct that business through an attorney? And does your interpretation hold true for any lawyer who would discuss any contract issue with Mr. Twombly?

Mr. Twombly has been clear with me when he thought the City Attorney's office needed to be involved and when it did not. I have followed his lead on that. If you desire the process to be different I suggest you and I be very clear about it and that Mr. Twombly be on board as well.

Looking forward to getting this cleared up.
Jim Moore

From: O'Meilia, David [<mailto:DOMeilia@cityoftulsa.org>]
Sent: Monday, June 20, 2016 4:18 PM
To: James Moore <James.Moore@moorelawok.com>
Subject: RE: Contact with City officials

Mr. Moore,