
TO: Monterey Select Board (*By Electronic Mail Only at admin@montereyma.gov*)
FROM: Lauren F. Goldberg, Esq.
RE: Access to Counsel
DATE: October 27, 2021

Town Counsel represents the Town by and through the Select Board acting as a whole, meaning that the Board provides specific guidance and direction on the provision of legal services pursuant to a majority vote of the Board. Individual Board members do not have authority to provide such guidance. Where multiple members contact Town Counsel individually, there is a risk that conflicting legal and factual information may be presented, resulting in inaccurate advice on particular matters. Such an outcome is not beneficial to the Town, results in unnecessarily high legal invoices, and places Town Counsel in an untenable position.

The Town must determine how access to Town Counsel is to be accomplished. A member of the Board, or an administrator, may be authorized to undertake contact with Town Counsel so as to ensure that a clear line of communication is maintained. Town Counsel cannot respond to individual Board members on matters. If it is not possible to address this method of communication, it will be impossible to properly advise the Board and serve the Town as a whole.

Further, where members of the Board have lodged complaints against each other, and Town personnel are also lodging complaints, Town Counsel can provide legal advice regarding specific legal issues but cannot mediate disputes or act as a personnel department. Decisions must be made as to how to handle these personnel issues and develop appropriate mechanisms to allow proper functioning of Town administration.

We regret the need to raise these issues, but we are very concerned that the current circumstances prevent us from providing proper legal guidance and advice to the Town. In the absence of a determination by the Town as to how Town Counsel will be properly utilized, we will unfortunately be unable to continue in this role. This is certainly not an outcome we anticipated and we do not wish to add to the problems facing the Town. However, we have a professional obligation to serve the Town's interests, and we cannot do so under the current circumstances.