

From: mayor@scarsdale.com
Date: October 11, 2019 at 8:01:15 PM EDT
To: "robertbergesq@aol.com" <robertbergesq@aol.com>
Cc: Clerk's Department <clerk@scarsdale.com>
Subject: Re: Elimination of Village Attorney Position

Bob,

I also enjoyed our conversation this afternoon. I appreciate your insight and experience as well as your very prompt attention to the matter we discussed.

I will maintain an open mind as we proceed with this process. I will reach out to you after we do more work in this direction to seek your input.

Best regards,

Marc

Sent from my iPhone

On Oct 11, 2019, at 6:45 PM, "robertbergesq@aol.com" <robertbergesq@aol.com> wrote:

CAUTION: External sender.

Dear Mayor Samwick:

I enjoyed our discussion this afternoon about the costs and benefits of eliminating the Village Attorney position and replacing that position by retaining an outside law firm to provide legal services to the Village. My letter to you yesterday voiced my concerns about such a switch, which we explored in greater detail today. On the other hand, there's certainly no downside to exploring outside firms and obtaining proposals from them. In the meantime, as I told you I would, I investigated how some neighboring towns, villages, and cities receive their legal services, and the answer is that some have an "in-house" Attorney(s) while others contract for those services from outside firms.

In particular, the following have hired their own "in-house" Attorney(s): the City of Rye, the Village of Mamaroneck, the Village of Port Chester, and the Town of Greenburgh (5 in-house attorneys). Of course, the large Westchester cities, Yonkers, New Rochelle, and White Plains have their own in-house counsel. Smaller towns and villages retain outside law firms as their municipal attorneys. For example, the Village of Larchmont uses James Staudt of McCullough, Goldberger & Staudt, LP. He also acts as Village Attorney for Bronxville, Croton-on-Hudson, and Hastings-on-Hudson. The Town of Mamaroneck uses William Maker of McMillan Constable Maker & Perone, LLP. The Town/Village of Harrison uses four different lawyers from four different law firms (which seems like a political accommodation in a town known for such). The Village of Rye Brook uses Keane & Beane. Mount Kisco uses Whitney Singleton of Singleton, Davis & Singleton PLLC. Town of North Castle uses Roger Baroni, Jr. of Stephens, Baroni, Reilly & Lewis, who also acts as Town Attorney for Town of Somers and Town of North Salem. Town of Yorktown uses Richard S. Abbate of Oxman Law Group.

Personally, I believe that our Village Staff, Police Department, Boards, Councils, and residents will be better served by hiring a very well-qualified in-house Village Attorney who will serve only one client -- the Town/Village of Scarsdale, and will always be available or on-call. While there is some benefit to the "institutional" knowledge of an outside law firm that serves or has served as counsel to other municipalities, the countervailing factors include: a) the profit-making agenda of an outside firm limits the amount of time/seniority the firm is willing to commit to the fixed retainer portion of a municipal engagement; b) municipal legal work is generally discounted from a firm's normal billing arrangement and so, doesn't command the highest priority from the firm; c) an outside firm has commitments to many clients, and must juggle its staffing and work flow to meet the most pressing matters --which may well not be Scarsdale's legal needs at any particular time; d) these firms are hardly "rock stars" of the legal profession -- not that Scarsdale needs rock stars to handle its mostly routine legal work.

On the other hand, the Village Attorney position is, in my view, a very desirable position for many attorneys, especially for some of the hundreds of extremely well-qualified attorneys who live in Scarsdale or its environs, as well as other experienced town or village attorneys in the area. For talented attorneys who have left (or are dying to leave) BigLaw or high pressured government positions in New York City, and who are raising their families, the position would be particularly attractive and interesting.

The benefit to the Town/Village of having a well-qualified in-house attorney is considerable. Most department heads in the Village are readily available to staff and the community and that's one of the big pluses of our Village government. We could avoid many legal problems if there were a greater and freer interchange between the Village Attorney and staff and/or residents. That simply will not occur with an outside law firm. The Village will also receive far fewer hours of legal work under an outside counsel arrangement unless it is willing to pay a surcharge that has to exceed the compensation package of the Village Attorney.

So my bottom line suggestion is that you should keep an open mind, and most certainly investigate outside counsel. But in doing so, ask tough questions about staffing, responsiveness, the limits of included retainer work, the cost for non-retainer work, the definition of non-retainer work, and the like. And please consider forming an advisory committee of resident attorneys to screen a reasonable cohort of finalists. All the best, Bob Berg.