

1) No man can serve two masters.

Bruce Woodbury's flier today is dead wrong.

Charter Section 1 says the City is the people, the inhabitants. He is right about that, the City, the People is his client.

2) Section 15 of Charter does not say the Council and Officials are his client too: it says Legal Advisor. He gives them legal advice to help them do their jobs.

Don't be confused; the Council & City Officers are employees & agents. They are not the City. That is you. Agents should be faithful to their employer - the City - the People. When they are unfaithful, the CA has no duty to represent them. When they break the law, against his advice, he does not represent them, he prosecutes them.

3) According to the Rules of professional conduct for attorneys in Nevada, a CA represents the City. See the article in Nevada Lawyer,

3) Duties. The Charter provides the duties of the CA, Section 15.

This amendment changes only *who* selects the CA, does nothing to change the his duties.

4) The Council sets the pay of every employee, including themselves.

a) The Council should not single out an elected CA and change his pay if he does not adhere to their political goals. This is pure bad faith if they do, and never in the best interests of the City. It is illegal; and if attempted the Council can be voted out, recalled, and subject to civil lawsuits.

b) Bruce Woodbury's Review letter states that an elected CA would be subject to political pressure from the Council by threats of having his pay cut. The threat of having your pay reduced to 0, that is, being fired, is surely more compelling than merely a pay cut, even to minimum wage. Mr. Woodbury makes the case that the *appointed* CA under our current system is under tremendous political pressure - I couldn't make the case better myself. Thank you Bruce.

5) Residency. This Charter Amendment does not require the CA be a resident. Neither does the Charter. Many City employees are not BC residents. But if his City-provided office, and all his overhead expenses paid by taxpayers, are in City Hall why wouldn't he become a BC resident? Does he really have to be? Then let the Council pass an ordinance. Or if they won't, let the people put forth an initiative. This argument is just a red herring.

6) Cost. An elected CA will pay the costs of his campaign. Appointed City Attorneys require the Council to spend tax dollars to hire a consultant, and more money to bring a candidate in from Ely or wherever for an interview.

7) Competence. Every County District Attorney in NV is elected. Half of them are in counties with a smaller population than BC. They have no trouble getting good people, they pay them a competitive salary. It's that simple. If the Council wants a good attorney, they will keep the salary competitive. If they want to sabotage the will of the people, they will play games with the salary.

Example of a *political appointed attorney*: In a current lawsuit, our *appointed* City CA says committee term limits are unconstitutional.

Is that *your* understanding, Mr. Woodbury - term limits are unconstitutional? Even if they are written in the NV Constitution? Didn't you have a ringside seat before the Court on that matter?

a) Are they unconstitutional because the People voted on them? That can't be because the People of Nevada voted on the term limits that are in the NV constitution.

b) Are they unconstitutional because the initiative's Description of Effect, which puts language into the City Code, is defective? This is *no argument* because the City Clerk has not actually put that language into the Code. She put different language in it, stuff she made up, with the CA's help. Check it out. And Judge Earl has *already ruled* that a Description of Effect that only sets out legal language to be added to a code meets the requirements of Nevada law.

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The City will lose this case - that's obvious to everyone. Term limits are constitutional. They will lose the debt limit case for similar reasons: 1) because the NRS already has a formula to limit municipal debt - so it's constitutional, and 2) the description of effect does the same thing the term limits one does; it provides code language.

But not before we spend half a million dollars of taxpayer money. We have spent about \$200,000 so far. Go back and read the claims paid lists.

Why is the CA is prosecuting these cases, which are sure losers? Because three Council members have said "We only want to know if they are legal".

Really? Why do they only want to know if *initiative ordinances* are illegal? What about the recent Charter amendment that says the Mayor can avoid the term limits in the Nevada Constitution? Why not sue somebody on that one? Why not sue to see if any other ordinances the Council wants and passes are illegal? Why not sue the State to get term limits in the NV Constitution ruled unconstitutional? The Council has never have sued any ordinance except for *voter initiatives*.

The truth is those Council members have *opposed* the voter initiatives from the start. The truth is, the Council member said nothing about illegality *before* the initiatives were filed. And as we have seen, the People wanted them, by large majorities. So they went through the initiative process. That's with the Article 19 in the NV Constitution is for, when politicians don't want the laws the People want. The People are supposed to be the Master. Just not in BC.

The very simple truth is, that having lost at the polls, those Council members want to do in Court what they could not do at the ballot box. And that is why our CA is suing the City - remember the City is the People, and his true client - in a colossal breach of duty and faith, even though he has a *sure loser of a case*. He is suing because those Council members can, and probably will, fire him. Talk about unprofessional?! Talk about appointed attorneys having independence from politics?! NOT!

The only question is, will they throw him under the bus when his lawsuits fail?

Nevada Lawyer, December 2009.

The ethical duties of the government civil attorney are predicated upon a clear understanding of who the client is. The duties articulated in RPC 1.13, regarding the representation of an organization acting through its duly authorized constituents, apply to the representation of a government entity.[25] The attorney therefore represents the government entity acting through the government officials that are the entity's duly authorized constituents; the immediate attorney-client relationship exists between the attorney and the government officials acting in their official capacities on behalf of the government entity. However, in Nevada this representation carries a special responsibility under RPC 1.13(f):

In dealing with an organization's...constituents, a lawyer shall explain the identity of the client to the constituent and reasonably attempt to ensure that the constituent realizes that the lawyer's client is the organization rather than the constituent.

Therefore, in Nevada the attorney has an affirmative duty to communicate to each government official with whom he or she has an immediate attorney-client relationship that the client is the government entity, not the official. Only by clearly establishing the boundaries of the attorney-client relationship and communicating that information can the attorney provide effective representation.

Government officials have a fiduciary duty to act in the public's best interest, and the attorney-client relationship between the government official and the attorney is tempered by this broader duty to the public.[26] The government civil attorney is held to a higher standard as a result, and has a corresponding duty to act in the best interests of citizens in the course of representing the government client. The attorney fulfills that duty primarily by providing timely and competent legal advice and representation to government officials and by the enforcement of Nevada law, which can limit the government entity's liability and protect taxpayer money.

See, e.g., *U.S. v. deVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999) (public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public's best interest);

See also NRS 281A.020(1)(a) (public office is a public trust and shall be held for the sole benefit of the people).