

CITY OF DETROIT CHARTER REVISION COMMISSION

RESEARCH REPORT

*Evaluation and Recommendation of Length of Term,
Removal Authority and Independent Article
On Effectiveness and Independence of Corporation Counsel*

For Discussion at March 22, 2011 Charter Commission Meeting

Prepared by Staff

Introduction

The Charter Commission has requested an evaluation and recommendation on the effect of several proposed revisions on the achievement of increased independence and effectiveness by the Corporation Counsel. These proposed revisions include altering the means of removal, specifying the term of appointment and making the law department and Corporation Counsel an independent office that is codified in its own charter article.

Realistic Assessment of Meaning of “Independence”

Before any credible evaluation can be made of the value of the revisions under review, or the necessity for additional revisions, it is imperative that the goal of the exercise be precise, clearly stated and rest on realistic assumptions and objective facts. The goal of achieving independence with a Corporation Counsel has myriad meanings, more or less depending on the background and familiarity one has with the role of an attorney generally and specifically their role and function in a municipal setting. To the less familiar it makes perfect sense to remove the Corporation Counsel from any direct or indirect influence by branches of government, instilling within the position unfettered discretion of action, while those more familiar with the role and functions of attorneys, and municipal attorneys in particular, will see the inherent risks and nuances of difficulty in such an approach, and the need to tread carefully in the selection and implementation of sought after mechanisms of independence.

Seeking independence in the sense of a Corporation Counsel who is beholden to no one except the “public interest” and who has near unfettered discretion, fails to strike at the heart of, or address, the concerns that have prompted citizens’ requests for an independent Corporation Counsel. In addition, the “public interest” is impossible to determine with certainty, no doubt varying depending on how the Corporation Counsel ascertains, interprets or values the “public interest”. Further, the discretion to afford a particular attorney has to depend on the role and function they play within the institution they serve, public or private, and is largely dictated by state laws and professional rules of conduct.

The request for independence was not a call to sacrifice effectiveness for unfettered independence of action, but a request to secure and improve Corporation Counsel's allegiance to the organization s/he represents, while maintaining competent legal representation. This as the goal clearly focuses one on the nature of the problem to be addressed, the challenges that will be encountered and the realistic changes that will bring one closer to the goal.

Perhaps the more productive and comprehensive guide to viewing independence is within the context of removing from the Corporation Counsel unnecessary influences and distractions that potentially challenge the ability to function and be effective in the execution of the duties of the office. This approach at once recognizes that there are specific "points of pressure" on the Corporation Counsel, and is grounded in the realities of the role of Corporation Counsel, as discussed below.

Nature, Role and Function of Corporation Counsel

In order to better understand the nature, role and function of Corporation Counsel, so that the proposed revisions can be accurately evaluated and appropriate recommendation given, it may be helpful to contrast the position with a similar one, offered by some as the model to use – Prosecuting Attorney. The office of Prosecuting Attorney is typically filled by an elected official¹ expressly charged with prosecuting violations of the state's penal code. The position's very nature and purpose makes it amenable to election and requires a great degree of independence of action. This strong requirement for almost unfettered independence springs from the fact that the Prosecuting Attorney represents the interest of the public at-large, which is an intended function of the position. The special relationship they share with citizens requires them, on our behalf, to seek to make communities, individuals and groups safe by enforcing laws that penalize conduct deemed improper and against the "public good." This necessarily requires the trappings of independence of action such as discretion on who to "go after", the charges to be brought, whether to settle the matter, the length and type of penalty to seek, and generally the determination of what is in the best interest of the public as it pertains to enforcing the law and seeking justice.

Quite unlike a Prosecuting Attorney, and significantly different, Corporation Counsel is specifically charged with representing a distinct client(s) who has interest and legal needs that can only be known through direction given by those client(s). In a large municipality its functions and day-to-day operations intersect with the law on numerous occasions, requiring routine and complex legal services ranging from code enforcement and defending against lawsuits to hundred million dollar bonds deals and development projects in the tens of millions

¹ It should be noted that while most cities, especially major cities, appoint their chief legal officer in some manner, some cities such as Seattle, Washington, elect their chief legal officer. See www.seattle.gov/law/

of dollars². This would also include the almost constant formal and informal legal advice and opinions requested by officers and departments of City government. None of the above mentioned services, which are but a sample of the legal services provided under the supervision of Corporation Counsel, can be initiated, competently performed or resolved without direction and input from some authority. Hence, the crucial difference between Corporation Counsel and Prosecuting Attorney.

It would seem at first glance that the person uniquely situated to provide the direction and decision-making needed on most of the legal matters arising in city government is the executive, whose primary responsibilities encompass substantially all of the above-mentioned legal needs of a municipal government that is structured along the lines of a Mayor-Council form of government. However, this obscures the role of the legislative body in the functioning of city government and implicates the question as to who is the actual client served by Corporation Counsel within a municipal corporation.

Who is the Client?

The debate over a corporate personality and possible existence of a non-corporeal legal entity that has rights and interests apart from the individuals who comprise and operate it is as old as our republic, and has been a preoccupation with western jurisprudence for some time. However, the law has settled this question for us in the affirmative, particularly as it relates to cities. The City of Detroit is a municipal corporation. *See, Home Rule City Act, MCL 117.1 ("Each organized city shall be a body corporate")*. Corporations, municipal and otherwise, enjoy an independent existence that transcends the temporary occupants of their seats of leadership and centers of operations. Indeed, the City of Detroit does not cease to exist with the departure of Mayors, City Council members and leadership of city departments. However, the law's resolution in favor of the independent existence of municipal corporations affords no easy solution to the many legal conundrums that arise in the area of providing legal assistance and representation and, in fact, serves as the source of many of these legal challenges.

One should be careful not to confuse the "client" with "representatives" and "agents" of the client. The difference in the two becomes readily apparent when the agents' or representatives' actions and interests deviate from those of the client. The basic understanding that there is both a client and representative(s) or agent(s) of the client is the starting point to making an informed decision on the changes that are necessary to ensure the effectiveness of a Corporation Counsel who is free from the pressure of unnecessary constraints and able to represent the best interest of the municipal corporation s/he serves. Michigan law is clear that when a corporation hires a lawyer, the lawyer represents the corporation and although "he

²The complexity, numerous and increasing legal needs of a municipal corporation the size of the City of Detroit is reflected in the size and organization of the law department into distinct legal units responsible for particular areas of legal work, and the use of outside counsel to assist with certain specialized legal needs of the City. The City of Detroit Law Department has approximately 114 employees, of which 72 are lawyers. The lawyers are assigned to one of four divisions which are composed of multiple sections.

must necessarily communicate with a corporation's human agents to effectively represent the corporation, [citation omitted], the purpose of the communication is representation of the corporation, not the agents themselves." Prentis Family Foundation, Inc. v Barbara Ann Karmanos Cancer Inst., 266 Mich App 39, 44 (2005).

Indeed, the Michigan Rules of Professional Conduct (MRPC), which guides the ethical actions of attorneys in Michigan, makes clear that an attorney employed by an organization represents that organization as distinct from those agents who act on behalf of the corporate entity. Thus MRPC 1.1.13 states:

Rule 1.13 Organization as Client.

(a) A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders, or other constituents. (emphasis added)

This fact is often lost on agents and officers of the corporation, who may require some reminding of this crucial fact from time-to-time.

There is a commonsense, practical presumption and legal expectation that the agents of a corporation will act in accordance with the best interest of the organization, and a legal recognition that a corporation can only act through its agents³. Prentis, supra. In fact, when agents of a corporation deviate from the interests of the corporation an attorney employed by the organization (Corporation Counsel in our case) is obligated to take certain actions to secure and safeguard the interest of the corporation, which is his true client. *See MRPC 1.7 Conflict of Interest; See also, discussion below on Conflict of Interests*. However, practically speaking, up until such time s/he must proceed taking direction from the client's surrogates (Mayor and City Council in our case), who are deemed to embody and represent the interests of the organization.

The legal needs of a corporation will thus be determined by the decisions and actions of its officers, which in the case of the City of Detroit consist of the elected officials (primarily Executive and Legislative branches of government). They will be charged, as intermediaries between the corporate body and legal counsel, with determining when legal assistance is needed on behalf of the city-client in the execution and fulfillment of their duties, and resolving city-client matters based on legal advice and assistance, as permitted by law or policy.

³ The Commentary to MRPC 1.13 states in relevant part:

The Entity as the Client

In transactions with their lawyers, clients who are individuals can speak and decide for themselves, finally and authoritatively. In transactions between an organization and its lawyer, however, the organization can speak and decide only through agents, such as its officers or employees. In effect, the client-lawyer relationship is maintained through an intermediary between the client and the lawyer. This fact requires the lawyer under certain conditions to be concerned whether the intermediary legitimately represents the client. (emphasis added)

However, the legal needs of both units of city government differ greatly, and dictate the quantity and nature of legal assistance that will be sought and provided to them.

Nature and Extent of Legal Needs of Executive and Legislative Branches

The City Council's need for legal services will typically be in two areas. The first involves legal advice and assistance related to ordinances or legal advice generally related to their function. *See for example, §6-407⁴ (Drafting) and §6-405⁵ (Advice and Opinions).* The other will be in discrete matters involving litigation, including approving requests for representation, settlement of lawsuits and pursuing litigation in matters that are under their purview, which on rare occasion may be against the executive branch. Understandably, this conservatively accounts for between 10% to 15% of the legal services provided by the City of Detroit Law Department⁶.

The legal needs of the executive branch are considerably more substantial than the legislative branch for obvious reasons, which is reflected and accommodated in the charter. *See for example, §6-403 (Civil Litigation), §6-404 (Penal Matters), §6-405 (Advice and Opinions), §6-406 (Form of Documents), §6-407 (Drafting).* Inherent in the executive function is the necessary power to legally defend and prosecute the interest of the municipality; to engage in legal due diligence on matters involving the numerous and often legally intricate services, activities and programs being contemplated or planned for the city; and to generally safeguard the rights, property and welfare of the city, in conjunction with the legislative branch. Moreover, the complex operations of city government require the immediate and almost constant use of legal services. The Corporation Counsel in this case becomes a ready, valuable and constantly used resource for the executive branch.

Conflict of Interest

A municipality consisting of separate units⁷ and branches of government, with different though largely complementary roles and duties, will inevitably come to disagreement over policy and actions taken in pursuit of policy. While rare, this can lead to legal action being taken by one branch or unit against the other. In these cases the issue of conflict of interest becomes a key concern of the Corporation Counsel who, as the legal representative for the

⁴ §6-407 (Drafting) states: "Upon request of city council, any city council member, or the mayor, the corporation counsel shall prepare or assist in preparing any ordinance or resolution for introduction before the city council." (emphasis added)

⁵ §6-405 (Advice and Opinions) states: "Upon request, the corporation counsel shall give legal advice and opinions to the mayor, a member of the city council or the head of any agency." (emphasis added)

⁶ Although not an official percentage, this number was suggested by the Law Department.

⁷ Although the elected Office of City Clerk is not a traditional branch of government, it is here referred to as a unit of government to reflect its position as a governmental body with some of the common characteristics of a branch of city government.

municipality, represents its constituent parts. Additionally, conflicts of interest can arise during the representation of individual elected officers or employees, where the lawyer becomes aware of facts which place the represented individual's interest at odds with the interest of the corporate entity (i.e. City of Detroit), which as stated earlier is the true client of Corporation Counsel.

These inevitable conflicts are the subject of numerous Michigan State Bar ethics opinions, an established body of case law and comprehensive guidance provided by the Michigan Rules of Professional Conduct. These taken together provide considerable guidance and rules on the resolution of these conflicts of interests. It should be reemphasized here that in these disputes the Corporation Counsel's loyalty is to the client-city and typically outside counsel will be retained to represent the interest of one party or another, who has the conflict.

Where the conflict is between branches of government the current charter provides City Council the right to obtain outside counsel and affords them the general right to obtain outside legal advice and opinions on matters pending before the body.

§4-121 (Special Counsel).

The city council may obtain the opinion or advice of an outside attorney in any matter pending before it. Where there exists a conflict of interest between the city council and another branch of government, the city council has the authority to retain an attorney licensed to practice law in Michigan who shall represent the city council in legal proceedings. Such attorney shall not represent the city as a municipal corporation in any legal proceeding. (emphasis added)

One city has adopted an approach to handling conflicts that should be considered by the Commission, with the addition of a mechanism for resolving disputes prior to actual litigation between the branches of government. In disputes between units of government, the City of Denver's charter requires the City Attorney (equivalent of Corporation Counsel) to "determine which of said units, in his or her opinion, is legally correct, and the other party to the dispute shall be advised to retain special counsel for representation....." *Denver City Charter, §6.1.2 (Special Counsel)*

The value of this approach is that it emphasizes, strengthens and reinforces the independent nature and objective role of Corporation Counsel, and is consistent with her/his obligation to the client – the City of Detroit as a body corporate. Why is this so? A determination as to which party is legally correct ostensibly means that unit of government, as an agent of the client-city, is acting in accordance with the interest of the true client. The client's attorney, Corporation Counsel, is actively engaged in the determination of which agent/branch of government's position is legally correct and thus in the best interest of the client-city. Corporation Counsel is now not seen as an advocate for either agent of city government, but rather an advocate for its client's interest (i.e. City of Detroit as a municipal

corporation), as represented by the branch of government determined to have the correct legal position.

Under the current charter language, Corporation Counsel *appears* to be forced to represent the interest of the executive branch in a dispute, irrespective of whether its position is legally correct and thus in accordance with the interest of the real client – the City of Detroit as a corporate body. Thus, the current language tends to reinforce and support the idea that Corporation Counsel is the attorney for the Mayor, where in fact s/he represents both branches of government as agents of the city-client’s interest.

In addition and as a complement to the Denver Model, the charter could adopt a process for handling disputes between the branches of government in an attempt to avoid unnecessary and costly litigation, which is never in the best interest of the city-client. For example, language could be inserted into the charter that requires representatives from each branch to meet over a period of time to discuss resolution of the dispute before filing suit. This “cooling off period” could range from 7 days to one (1) month, and require or allow for the assistance of experienced facilitators, who may be retired judges, respected member of the State Bar or someone possessed with demonstrable expertise in the area of dispute.

Review of Recommended Revisions

Term of Appointment

The Commission has expressed an interest in establishing a term of appointment for Corporation Counsel that exceeds the tenure of the appointing authority. The current charter is silent on the length of appointment for the Corporation Counsel. It has typically been the case in recent history that each Mayor since Mayor Coleman A. Young has selected his own Corporation Counsel, as permitted by charter. The idea behind imposing a term of appointment, which exceeds the tenure of the appointing authority, is to remove the Corporation Counsel from any undue influence which may impact the ability to adequately represent the interest of the City. The undue influence arises from the fact that Corporation Counsel serves at the pleasure of the executive, which is but one branch of government or agent the client-city.

There are underlying assumptions that need to be addressed or articulated in order to assess this proposed revision. The first assumption is that Corporation Counsel is less effective because she is subject to removal at any time by the Mayor without cause, which may lead to a compromise of objectivity and effectiveness. Thus, giving a definite term of appointment, beyond the tenure of the mayor, will relieve this constraint on objectivity and effectiveness. However, there appears to be no objective documented support for this assumption in the literature or recorded history of the city. It appears that it is the potential for undue influence that fuels the consideration of imposing a term of appointment for Corporation Counsel. The

question becomes whether under these circumstances the potential for undue influence is enough of a reason to guard against it by imposing a charter mandated term of appointment that exceeds the tenure of the Mayor.

The second underlying assumption is that, whether the undue influence is potential or real, there are currently no mechanisms that will assist the Corporation Counsel in not compromising his legal and ethical obligations to the city-client. Arguably the right of resignation cures any potential compromise of the Corporation Counsel's legal obligation to represent the best interest of the city as an organization. However, this act does not necessarily protect the interest of city-client, which is the goal, as the circumstance that prompted the resignation still remains. The Michigan Rules of Professional Conduct provides a mechanism for handling situations where Corporation Counsel is aware of conduct by a representative of the client-city that is unauthorized, improper, or illegal and is likely to result in substantial injury to the client-organization. According to the MRPC 1.13:

Rule 1.13 Organization as Client.

(b) If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization.

In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization, and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization.

Such measures may include among others:

- (1) asking reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) When the organization’s highest authority insists upon action, or refuses to take action, that is clearly a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, the lawyer may take further remedial action that the lawyer reasonably believes to be in the best interest of the organization.

Such action may include revealing information otherwise protected by Rule 1.6 only if the lawyer reasonably believes that:

(1) the highest authority in the organization has acted to further the personal or financial interests of members of that authority which are in conflict with the interests of the organization; and (2) revealing the information is necessary in the best interest of the organization. (emphasis added)

Admittedly, even with these rules it may be no easy task trying to figure out and proceed in a manner consistent with them. Nevertheless, guidance in the form of these rules and legal ethics opinions are helpful, along with the ability to consult the State Bar of Michigan. In addition, Corporation Counsel will likely have recourse to other state and federal agencies or officials who can intervene if the matter is within their jurisdiction.

It appears that imposing terms of appointment for Corporation Counsel is a novelty in Michigan⁸ and not found as standard language in the charters of many major U.S. cities. (See *Chart 1 below*) Typically, if a term of appointment is imposed by charter it is associated with an elected position. Thus, San Francisco’s charter allows for an elected City Attorney with a term of four (4) years. See, *Charter of San Francisco, §6-100 (Designation of Other Elective Officers)*. However, the charter of Jacksonville, FL makes the term of the General Counsel the same as that of the Mayor, who has the power of appointment. *Jacksonville City Charter, §7-203*. Miami, Florida’s City Attorney is elected by the City Commission and serves “until the time for the election of the city officials specified” in the charter. *Miami City Charter, §21 (Department of Law)*

If the Commission were interested in imposing a term of office for Corporation Counsel that would shield the position from the potential of undue influence it could proceed in a number of ways including, but not limited to:

1. Make the term one (1) beyond the actual term served by the appointing Mayor;
2. Set a term commensurate with the term of office for the Mayor, with a term limit. (e.g. Corporation Counsel can serve no more two (2) consecutive four (4) year terms);
3. Set a term that is substantially long (e.g. 8-10 years).

⁸ Independent research by the Michigan Municipal League was unable to locate any cities in Michigan with a term of appointment for a Corporation Counsel. Staff would like to express their thanks to the Michigan Municipal League for the research assistance and resources provided to the Charter Revision Commission.

However, the Commission should seriously consider the necessity of a specified term of appointment if there is an equitable distribution of appointment and removal power, and a set of reasonable criteria for the exercise of both. If the goal is to shield the Corporation Counsel from undue influence, then perhaps the best approach is to address the power of appointment and removal, since an extended term of appointment does not prevent the questionable exercise of the ultimate power of removal.

Method of Removal/Removal Authority

Understanding legally that the client of the Corporation Counsel is the municipal corporation itself, and that s/he is the legal advisor and representative for both branches of government, calls into question the wisdom of allowing one branch of government (executive) to remove this city officer, without cause and no involvement of the other branch. Under the current charter the legislative branch, which is also served and represented by Corporation Counsel and is an equal agent of the city-client, has no participation in the removal of Corporation Counsel. This bolsters the belief and perception among citizens and some elected city officials that the Corporation Counsel is the “lawyer for the Mayor.”

The above-mentioned definition of independence as the removal of unnecessary influences and distractions that potentially challenge the ability of Corporation Counsel to function and be effective in the execution of her/his duties, highlights the current charter language which places removal power solely within the executive branch. There appears to be no uniform national standard among cities in addressing this issue as illustrated in Chart 1 below. However, there is a conspicuous trend or tendency to allow removal by the Mayor or equivalent, without cause. Also evident in the data in Chart 1 is that the power of removal is generally granted to the appointing authority, whether Mayor, City Manager or Legislative branch of government.

*(Chart 1) Selection and Removal Procedures for Select Cities⁹
and Term of Appointment*

City	Method of Selection	Method of Removal
Atlanta, GA	Appointed by Mayor subject to City Council’s confirmation.	Removed at pleasure of Mayor or by City Council by three-fourths’ vote of its membership.
Austin, TX	Appointed by City Manager	Serve at pleasure of City Manager.
Baltimore, MD	Appointed by Mayor and confirmed by majority of City Council	Serves at pleasure of Mayor.
Boston, MA	Appointed by Mayor.	Serve at pleasure of Mayor.
Chicago, IL	Appointed by Mayor with advice and consent of City Council	Removal without cause by Mayor.
Cleveland, OH	Mayor appoints.	Serves at pleasure of Mayor.
Dallas, TX	Appointed by City Council	Majority vote of City Council
Fresno, CA	Appointed by City Council.	Without cause by majority vote of City Council.
Houston, TX	Appointed by Mayor and confirmed	Without cause by Mayor.

⁹ The cities in Chart 1 includes twenty (20) of the largest U.S. cities based on 2000 census data, and the city of Pittsburgh, PA.

	by City Council.	
Jacksonville, FL	Incoming Mayor appoints panel of five attorneys to identify three (3) candidates that they recommend to him for General Counsel. Two of the panel members must be, if possible, former General Counsels for the City. Mayor appoints General Counsel from the three recommended candidates and City Council confirms appointment.	Removal by Mayor for cause, with concurrence of majority City Council. Term of appointment coincides with term of Mayor.
Las Vegas, NV	Appointed by City Council	Removed by City Council.
Los Angeles, CA	Appointed by Mayor subject to City Council's confirmation.	Serves at pleasure of Mayor.
Memphis, TN	Appointed by Mayor with majority Council approval.	Removal by Mayor with concurrence of a majority of Council.
Miami, FL	Elected by City Commission	Serves in four (4) year terms commensurate with election cycle of other elected officials in City. Removal authority expressly withheld from City Manager.
New York, NY	Mayor appoints.	Removal without cause by Mayor.
Philadelphia, PA	Appointed by Mayor with advice and consent of Council.	Serves at pleasure of Mayor.
Pittsburgh, PA	Mayor appoints City Solicitor subject to City Council approval.	Mayor may remove at will, but removal not effective until Mayor transmits reasons to City Council in writing.
San Antonio, TX	Appointment recommended by the City Manager and confirmed by the majority of the Council	Removable at the will and pleasure of the City Manager with the advice of the Council.
San Diego, CA	Elected since 1977.	Term Limit of two consecutive four (4) year terms
San Francisco, CA	Elected	With cause by majority vote of City Council. Serves 4 year term.
San Jose, CA	Appointed by Council	Removed by Council for any reason.

To lessen the potential for unnecessary influence on the Corporation Counsel's effectiveness and objectivity and accurately represent and indicate that Corporation Counsel is the attorney for the City of Detroit as a municipal corporation, who represents and serves both branches of government as the embodiment and agents of the corporate entity, the Commission may consider one of the above methods of removal or a combination of them.

Some factors to consider are: (1) whether to allow for termination for cause or no-cause; (2) in which branch(s) of government will the power of removal reside; (3) if the legislative branch will have removal power what will be the vote necessary for removal; (4) will there be joint power of removal; (5) if there is removal for cause what will be the basis for cause.

Independent Office (Separate Article)

Although the research was not exhaustive nationally, it appears that there is no standard regarding where the Corporation Counsel is placed within the charter. Understandably, the focus in charters is centered on Corporation Counsel's relationship to the branches of government, which takes into account the position's duties, role and function as it

relates to the units and branches of municipal government. In most charters, independence is expressed more as a function of the substantive role and duties and relationship of the Corporation Counsel and Law Department to the government branches and officers, rather than by the descriptive location of the position and department in the charter.

While alone it has no real significance, setting forth the charter provisions related to the Law Department and Corporation Counsel in a separate article only speaks to an independent department and chief legal officer if accompanied by other demonstrable, substantive indicators of independence (i.e. independence in the sense of a Corporation Counsel who is reasonably unimpeded in her/his dedication and service to the interest of the municipal corporation client s/he represents).

The beginning of the establishment of an independent law department and chief legal officer is explicit charter language stating that the Corporation Counsel is the sole legal advisor and attorney for the City of Detroit as a body corporate; and for all of its branches of government, departments, officers and employees in matters that relate to their official duties, as may be required by law, charter, contract, city policy or ordinance. It should make clear that the City of Detroit as a municipal corporation is the true client of the Corporation Counsel, whose interest Corporation Counsel is charged to unswervingly serve and protect. Clarity in the charter regarding the process Corporation Counsel is to use when confronted with a conflict of interest among the branches of government should also be considered with an eye toward embedding the concept of objectivity and independence in the conflict of interest resolution process. Also, an equitable distribution of power among the branches of government in the appointment and removal process is another strong facilitator and indicator of Corporation Counsel's independence from the branches of government and allegiance to the city-client.