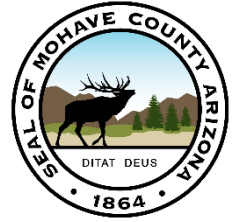


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May 7, 2025

TO: Mohave County Board of Supervisors, Department Supervisors, County Employees
FROM: Civil Division, Mohave County Attorney's Office
DATE: May 7, 2025
SUBJECT: Role of the County Attorney's Office – Civil Division

This memorandum outlines and provides an overview of the responsibilities of the Civil Division of the Mohave County Attorney's Office (MCAO). Our aim is to ensure a strong understanding of our role within the County and to promote effective collaboration.

SECTION 1 – WHAT ARE THE MOHAVE COUNTY ATTORNEY'S DUAL ROLES?

MCAO is the chief criminal prosecutor representing the State of Arizona within the geographic area of Mohave County (A.R.S. § 11-532); however, the MCAO has other duties, which functions similar to the County's in-house law firm, and these duties are performed by the MCAO Civil Division. These duties include advising the Board of Supervisors, County elected officials, and other various department heads, as well as other statutory duties such as enforcing the State's open meeting law (A.R.S. § 38-431.06) and elections laws (A.R.S. § 16-1021). Satisfying these various, and sometimes competing, duties can create unique challenges for our office.

SECTION 2_- WHO IS THE CLIENT?

At all times the MCAO represents Mohave County, which is our primary client in civil legal matters. On occasion we may also advise and represent certain taxing or special districts.

Because the County is an organization that acts through individuals, MCAO provides legal advice to, and receives direction on legal matters from the County's elected and appointed officials. That does not mean, however, that these individuals are themselves "clients" of our office. Generally, when we are rendering advice to these individuals, we are doing so as the County's lawyer, not the individual's lawyer. This is the case even when the advice concerns the individual's own duties (for example, regarding whether the individual has a conflict of interest that must be declared). This is the case even when the individual is an elected official.

Occasionally, in a lawsuit, one or more County employees or elected officials are named as parties (either plaintiff or defendant). For example, statutes require that the Treasurer be named as a defendant in tax-lien-foreclosure cases; another statute permits the Assessor to be named as a plaintiff in certain tax appeals. Individuals who sue the County often name as defendants both "Mohave County" and individual members of the Board of Supervisors or other elected officials. So long as the employee or official is named in an official capacity, and faces no personal liability in the case, we still consider the actual client in these cases to be the County and we do not consider the individual employee or elected official to be a separate client. In some lawsuits, however—including certain tort lawsuits—the named employee or official does face personal liability. For example, an inmate of the Adult Detention Center might file a claim or bring a lawsuit against a corrections officer individually, as well as the Sheriff and Mohave County, alleging that the officer used excessive force and injured the in-mate. In those cases—assuming the County is obligated to defend and indemnify the individual, and we determine that we are ethically able to provide that defense—that individual is a separate client of our office, along with Mohave County and any other named County employees and officials. How this joint representation works is described in Section 8 below.

It is important that our office and the individuals we advise have a mutual understanding of who the client is because that identity has a profound impact on how our duties of confidentiality and loyalty are applied, or whether we have a conflict between different clients.

SECTION 3- WHAT ARE OUR RESPECTIVE ROLES?

The County, as client, sets policies and goals through its elected and appointed officials; MCAO determines legal strategy and gives advice regarding legal considerations and consequences. When a contract or other legal instrument is being drafted and negotiated, it is up to the County to decide what the substantive terms of the agreement should be – for example, what duties each party has; how much money, if any, is changing hands; and when the various duties must be performed and to what standard. It is MCAO's role to assist with drafting the document (normally by reviewing a draft created by a county representative) to ensure that it accurately reflects the County's intent, as articulated by the appropriate County representative. MCAO will advise County representatives with respect to the legal risks and possible consequences of a particular decision and course of action and will work with them

to develop a legally permissible way of achieving the County's policy goals. It is the County's responsibility to determine, as a policy matter, what course of action to take after considering MCAO's legal advice as well as other non-legal risks and benefits associated with available alternatives. MCAO will not, however, approve a contract that contains a provision that is clearly illegal or clearly exceeds the County's authority. MCAO is legally and ethically prohibited from doing so.

In the context of litigation, the County sets the goals and determines the County's position on the dispute. For example, the County will decide, after receiving MCAO's advice, whether to advance, accept, or reject a settlement offer or whether to appeal an unfavorable decision by a lower court. The process of litigation, however, is generally MCAO's province. In consultation with appropriate County representatives, MCAO will determine what legal arguments to make, what motions to file and when to file them, as well as whether to grant professional courtesies such as time extensions to opposing counsel. (Please note that, under the ethical rules that apply to lawyers, we are required, in most instances, to extend professional courtesies to opposing counsel, unless doing so would prejudice the County.) Which individuals or bodies are authorized to make the above decisions on behalf of the County can vary depending on the circumstances, as discussed in Section 5 below. There are also circumstances in which we represent individual clients in addition to the County; how this works is discussed in Section 8.

SECTION 4 - WHAT ADVICE WILL MCAO NOT GIVE?

The deputy county attorney assigned to assist you will normally advise you only in your capacity as a representative of MCAO's primary client, which is the County. MCAO does not represent you personally and cannot advise you about personal legal matters. One area of particular concern is the area of employment and personnel matters. If you, personally, are the subject of an employment action such as a disciplinary action, this is not a matter about which any deputy county attorney can give you advice. You can contact the County's Human Resources Department for assistance regarding Mohave County personnel policies and procedures; if you feel you need legal advice, however, you must retain private counsel. Remember also that MCAO represents the State as its criminal prosecutor and is authorized to enforce certain civil statutes (such as the open meeting law) that apply specifically to public officers and employees. Accordingly, a deputy county attorney assigned to assist you cannot advise or defend you in a criminal case, or in certain types of civil enforcement actions, even if you believe that you took the acts that are the subject of the enforcement action in your capacity as a county employee or official. Communications with anyone in MCAO regarding a matter over which the County Attorney has enforcement authority also may not be confidential or privileged. You should not discuss with any deputy county attorney anything relating to a criminal matter under investigation or pending against you, a member of your family, or a friend.

SECTION 5- WHO IS AUTHORIZED TO EVALUATE LEGAL ADVICE AND MAKE A FINAL DECISION?

Vertical Authority: Chain of Command.

As noted, the County, as an organization, can act only through individuals. It is important that we have a mutual understanding of who has the authority to make a decision on behalf of the County with respect to a particular legal matter. MCAO normally provides day-to-day advice on an informal basis, often simply in the form of a verbal discussion or email exchange. Many times, that informal discussion occurs between a county employee most familiar with the issues and related facts and the deputy county attorney assigned to assist their department. That particular county employee, however, may not have the authority to make certain policy decisions on behalf of the County, and may need to refer a decision up the chain of command to a higher authority, who might be the Board of Supervisors or an individual elected official. If it is the Board of Supervisors, a public vote by a quorum may be required before legal action can be taken. It might also be necessary to involve representatives of other departments whose input is necessary or appropriate. Please note that MCAO will not advocate for one County official or department against another. It is helpful if you inform the members of your staff what decisions are within the scope of their authority, so they know when to refer a matter up their chain of command. The deputy county attorney assigned to advise you will normally assume that the staff person designated to work with that lawyer on a matter is the one who is authorized to make most of the decisions about it; if this is not the case, you may be called upon to clarify the staff member's scope of authority.

Horizontal Authority; Different Elected Officials.

Situations may arise where the County's executive authority is split. The Board of Supervisors is the primary executive body, with the broadest scope of authority to act for the County. It has the authority to "supervise the official conduct of all county officers ... charged with assessing, collecting, safekeeping, managing or disbursing the public revenues," and to "direct and control the prosecution and defense of all actions to which the county is a party and compromise them." The board may delegate some matters over which it has exclusive authority to the County Manager, but each of the other elected officials has some independent authority to control how they fulfill the obligations of their office—including the County Attorney, and we are sometimes called upon to render advice, or provide representation, with respect to matters that impact more than one elected official's office. For example, suppose the County's finance director (who reports, through the County Manager, to the Board of Supervisors) requests advice about what a particular statute requires. We might conclude that there are two possible interpretations and that, although one appears to be more likely to be favored by a court if the matter were ever litigated, both are legally defensible. If the statute's interpretation has the potential to impact not only the finance department but the Treasurer's office, who decides which interpretation to adopt? As we have already stressed, our client is "Mohave County," and not the individuals or groups who act for the county, and, as we have also explained, our role is to provide advice about available legal options and associated risks

and abide by the policy decision made by the client. In a situation like that described above, in which we are called upon to give advice that we realize will impact more than one elected official's office, the deputy county attorneys who regularly advise each office will consult with one another, and with the Chief Civil Deputy as necessary, to formulate our advice. We will then give that same advice to both offices. In the hypothetical example, we would likely advise both offices that both interpretations of the statute are legally defensible, though the arguments in favor of one are stronger than the other. It is then up to the two offices to work together cooperatively and determine which approach to take. We will not advocate on behalf of one county office against another. If the two offices cannot reach consensus, the question then becomes which elected official or body has the ultimate authority to make that particular decision for the County. We can offer advice regarding which we think that is, and if the authority is clear, we will accept direction from that official or body. Unfortunately, however, the scope of an individual elected official's authority to act for the County is sometimes unclear, so we may not be able to come up with a definitive answer. If we cannot, we may—depending on all the facts and circumstances—be forced to treat the situation as a conflict between two client representatives, even though in fact we have only one client—Mohave County—and the issue is who is authorized to act for the County. That may in turn require retention of outside counsel. We try very hard to work effectively with County officials to avoid such situations, which can be costly for the public.

SECTION 6- WHAT IS THE ATTORNEY-CLIENT PRIVILEGE?

What communications are protected?

A communication will not necessarily be protected by the attorney-client privilege just because a lawyer is involved in the discussion or, in the case of a memorandum or e-mail, just because a lawyer is “cc’ed” on the communication. Nor will it be protected by the privilege just because it is labeled “privileged” or “attorney-client privileged”; likewise, a communication may be protected by the privilege even if it is not labeled as such. Determining whether a communication is privileged requires analyzing all the parties to—and the content of—the particular communication.

To fall within the privilege, a communication must, first, be between a lawyer and the lawyer's “client.” In the case of the County, that means a communication between a county representative and the County Attorney, a deputy county attorney, or a private lawyer serving as outside counsel under contract. The client representative may be the Board, an elected official, the County Manager, a department head, or another county employee, depending on the circumstances of the communication. If the person speaking with the lawyer is acting within that person's scope of authority in communicating with counsel, then that person qualifies as a county representative whose communications might be privileged. But the fact that the communication is between the County's lawyer and a county representative is not enough to make it privileged. The communication must also be made confidentially and for the purpose of obtaining legal advice. If outside parties (such as county consultants) are privy to the communication, it is probably not privileged. If a communication was privileged and

then it is shared with an outside party, the privileged status is likely lost. Even a privileged communication that is shared with too many people within the County organization may lose its privileged status. The point is this: if you communicate with a lawyer in our office and intend that communication to be privileged, do not share that communication (written or oral) with any non-county elected official, officer, or employee; also limit the county personnel with whom you share the communication to those who have a need to know. It is also a good practice to keep any documents requesting legal advice, or containing legal advice from the county's lawyers, separate from your other documents in your files and clearly label them "Confidential; Attorney-Client Privilege." The same goes for emails; if you are seeking legal advice, it is good practice to label the email – either in the subject line, or by using Outlook's "permission" option – "Confidential; Attorney-Client Privilege." MCAO lawyers endeavor to do this in their communications with client representatives, as well. But given the volume and ease of email communication, please do not assume that an email from an MCAO lawyer that lacks such a label is not privileged. If in doubt, please ask your assigned deputy county attorney or the Chief Civil Deputy.

Who controls the privilege?

It is important to understand that, although our communications may be privileged, it is normally Mohave County and not the communicating individual who is our "client" and thus holds or "owns" the privilege. The privilege can be asserted, or waived, only by the board or official who has authority to act for the County with respect to the matter that gave rise to the communication. That is most often (though not always) the Board of Supervisors or their designee, the County Manager. So please keep in mind that we may share your "confidential" communications with other County staff members or officials when we conclude that such disclosure is in the best interests of Mohave County. As noted, however, MCAO does sometimes provide representation to a county official or employee in their individual capacity, in which case we would owe a duty of confidentiality to that individual, as well as to the County as a whole; the effect of such joint representation on issues of confidentiality is discussed further in Section 8 below. If you ever have a concern about how the duty of confidentiality will apply to a particular communication or are confused about whether you are an individual "client" of MCAO, please seek clarification from your assigned deputy county attorney or the Chief Civil Deputy.

SECTION 7. COMMUNICATION FROM MCAO

Communicating, in the litigation context, it is imperative that the individual clients (if any) and all representatives of the organizational client (the County) be candid with the assigned lawyer and cooperate with all requests for information or documents and with any requests that certain electronic documentation be preserved. If you have a question concerning whether certain information should be disclosed, or documents preserved for possible disclosure later, you must not make the decision to withhold information yourself but must consult with the assigned lawyer who will inform you of the legal requirements you must follow. It is also important that we be consulted in a timely manner so that we have time to do the work,

including any necessary legal research and analysis. As much as we would like to think we can, it is incredibly difficult to provide “on-the-spot” analysis of complicated issues or provide an overnight turnaround for the review of a contract, resolution, or ordinance.

During proposed or actual litigation, we will do our best to keep key county personnel informed about the status of the case and important developments. Note that there will be “quiet times” when nothing may be happening with a litigation matter, but that does not carry either a negative or a positive connotation about the case. If you have questions about the status of a pending case, please contact the assigned deputy county attorney, who will be happy to give you an update.

SECTION 8. WHAT HAPPENS WHEN CAO HAS A CONFLICT OF INTEREST?

What is a “conflict of interest”?

A lawyer has a conflict of interest when there is a significant risk that the lawyer’s independent professional judgment in advising and recommending options to one client will be materially limited by the lawyer’s duties to another client or to another person, or by the lawyer’s own interests. As noted above, a mere disagreement between County officials usually does not create a conflict of interest for our office because, even when several officials are involved, there is normally still just one client: Mohave County. But we do sometimes have an individual client in addition to the County. For example, someone who is injured while incarcerated at the jail might sue an individual corrections officer as well as the Sheriff (usually in their official capacity) and Mohave County. It is possible that MCAO may defend all the defendants so long as their interests are aligned, however, if the injury was, or may have been, caused by the corrections officer’s failure to follow detention-facility procedures, the County’s interests may not be the same as the officer’s, especially if the Sheriff wants to discipline the employee for those actions. In that event, the corrections officer on the one hand, and the Sheriff and Mohave County on the other hand, would have conflicting interests.

Conflict Checking; Joint Representation.

If a claim is brought against you in your individual capacity based on actions taken in the course of your county duties, the County Risk Manager and MCAO will determine whether you are entitled to be defended and indemnified by the County. If there is no conflict, then MCAO can jointly represent the County and you. If that is the case, we will explain to you, at that time, certain conditions and limitations on the scope of that representation, which are a result of our simultaneous representation of the County and the fact that the County is funding your defense. If you are not comfortable with those limitations, you can refuse to be represented by our Office—that is your right. But if you do so, you might have to hire your own lawyer, at your own expense.

If MCAO represents both you and the County with respect to a particular matter and a conflict develops after we undertake that representation, we may be forced to withdraw and not represent either party in connection with that matter.

SECTION 9. WHEN IS OUTSIDE COUNSEL SOUGHT?

MCAO endeavors to conserve County resources by handling in-house as many of the County's civil legal matters as possible; nevertheless, on occasion, MCAO must hire outside counsel, either to comport with ethical obligations when a conflict of interest exists, or because of a specialized-expertise issues. When hiring outside counsel, MCAO considers a variety of factors, including the outside lawyer's knowledge and experience in the particular area for which counsel is sought, standing with the State Bar, fee structure, and local presence. Only MCAO, the Board of Supervisors, and the County Manager are authorized to select outside counsel.

CONCLUSION

We hope this information has provided you with a clear understanding of our office's role in the daily operations of county government. Since we collaborate with many individuals across various departments, it's important that everyone understands who our clients are, the scope of our legal representation, and the ethical standards our attorneys uphold. If you have any questions or need further clarification on any of the topics covered in this memorandum, please don't hesitate to reach out to your assigned deputy county attorney or contact the Chief Civil Deputy.

Sincerely,

Mohave County Attorney's Office, Civil Division