

CLARENCE FIRE DISTRICT NO. 1

FINAL COPY

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Board of Fire Commissioners:

Douglas G. Garlapo, Chairman
David R. Metzger, Vice-Chairman
David M. Bissonette
James Schlabach
Nathan M. Work

Treasurer

Kim M. Lash

Secretary

Yvonne Work

The Board of Fire Commissioners' work session meeting was called to order by Chairman Garlapo on **Tuesday, October 6, 2015** at 18:00 hours.

Roll Call:

Present: Commissioners Garlapo, Metzger, Bissonette, Schlabach, and Work, Treasurer Kim Lash

Absent: Secretary Yvonne Work, Attorney Bradley Pinsky

Guests: Attorneys Mark Butler (6:00 PM), Robert Friedman (6:20 PM), David Kloss and Jason Lahti (6:40 PM), First Assistant Chief Jeff Schlabach (7:00 PM). Also attending for a portion of the discussion Assistant Chief Jim Havernick.

Interviews for District Counsel:

Mark Butler:

District Question 1: What is your experience and background in Fire District Law?

Answer: Teaches for the Association of Fire Districts. Has practical and legal experience as a trial attorney and still does litigation for insurance companies in their defense. Represents a number of fire districts across the state. Develops and teaches classes. Is actively involved in fire litigation. Has written two books on fire district law. His business model is to be efficient and timely so that the Board will send him more business. His hourly rate is higher but represents thirty years of experience. He only does fire work and his clients are mostly towns, villages, fire districts and ambulance/EMS groups.

District Question 2: Clarification on billing.

Answer: Prepayment of retainer is reduced by the hourly rate as services are rendered and is replenished through an additional retainer.

District Question 3: Experience with truck bidding specifications?

Answer: Bidding specifications are in three parts: 1) the invitation to bid, 2) insurance and payment bonding requirements and 3) the truck specifications. There have been many changes to the law in the last ten years and especially in the last five years. So as to keep the process from having an unfair advantage to any specific bidder proprietary information must be removed from bidding specifications. He has a computer program that filters certain things out and having him review the specifications is worth the cost to avoid litigation.

District Question 4: Experience with bonding?

Answer: If the bond is less the \$1 million he will handle it and his rates are competitive with those of bond counsel (approximately \$2,500). The last bond he helped issue was at the rate of .875%.

District Question 5: What is your preferred method of communication and what turnaround time can be expected?

Answer: Client expectations drive his relationships. In the event of a phone call he will always follow up with a written synopsis as he has found clients will retain approximately 30% of his phone response but about 90% of the written answers. Also the written answers can be easily referenced again in the future. If the response is targeted outside the organization he will draft a formal letter. He is prepared to do what is required by the Board. As an example, he recently worked throughout the night with a group that experienced a line of duty death. He is the only attorney in his office and the Board will get him if they call. His administrative assistant takes the information and forwards to him for immediate response. If he is out of town he has a back-up attorney from Albany that covers for him, in which he places an extreme level of confidence. He communicates in advance when he will be on vacation and he may even be reached then if necessary, but such responses would come at a premium price.

Interviews for District Counsel:

Mark Butler (continued):

District Question 6: Do you have relationships that would be in conflict with those of the Fire District? For example: Fire Company members, DiVal Safety, Churchville Fire Equipment, Twin City Ambulance or the Town of Clarence.

Answer: No.

District Question 7: Are you anyone's expert witness?

Answer: No.

District Question 8: What is your comfort level with personnel matters such as violence in the work place?

Answer: Very comfortable as it represents approximately 30% of the work he does.

District Question 9: Do you have a peer rating such as Martindale-Hubbell?

Answer: He has the second highest Martindale Hubbell rating. A higher rating can only be obtained with a fee, which he refuses to pay.

Bob Friedman:

District Question 1: What is your experience and background in Fire District Law?

Answer: He has represented Getzville Fire Company for one year and no fire districts. They also employ one associate that worked for another company with 100 Fire Company clients. He has 30 years in municipal law and private practice.

District Question 2: Experience with bonding?

Answer: None.

District Question 3: What is your preferred method of communication and what turnaround time can be expected?

Answer: He is available seven days a week by cell or e-mail and the Board can anticipate a very quick turnaround time. There are multiple people in the firm but he would be the Board's primary contact. If another lawyer handled a District's concern it would be based on that individual's legal experience in the area of question.

District Question 4: Do you have relationships with others that would be in conflict with those of the Fire District? For example: Fire Company members, DiVal Safety, Churchville Fire Equipment, Twin City Ambulance or the Town of Clarence.

Answer: No.

District Question 5: What is your comfort level with personnel matters such as violence in the work place?

Answer: Very comfortable.

District Question 6: Do you have a peer rating such as Martindale-Hubbell?

Answer: No Martindale Hubbell rating but has an on line rating based on testimonials at www.avvo.com.

District Question 7: Does your firm have a precedence setting case?

Answer: Nothing comes to mind.

District Question 8: What is your personal opinion on modified duty?

Answer: Basically it is not a good idea.

District Question 9: Do you have anything you would like to add?

Answer: He reviewed the District's website for the minutes and budget and noticed the district currently pays a flat \$5,000 legal service fee. He would be willing to do the same for unlimited normal counsel. He does work with other nonprofits as a member and advisor including: the Brothers of Mercy, Clarence Senior Center and Rotary. He knows the community and has a commitment to it. He will treat the Board well, be available when needed and will get up to speed quickly. He wants to do a good job so the Board will recommend him to others.

Interviews for District Counsel:

Dave Kloss and Jason Lahti:

District Question 1: What is your experience and background in Fire District Law?

Answer: Don't currently represent any fire districts.

District Question 2: What Experience with truck bidding specifications and bonding?

Answer: They did represent a municipal bidder in lowest responsible bidder specifications litigation. No bonding experience.

District Question 3: What is your preferred method of communication and what turnaround time can be expected?

Answer: There is no preferred method of communication. It is dependent on the circumstances involved and the individuals. They pride themselves on their accessibility and are available 24/7. They can guarantee a response within 24 hours and usually within one hour. They will take a call right away if they are able as it is important to allay concerns at all hours. Half their staff members are residents of the Town so they are able to attend meetings.

District Question 4: Do you have relationships with others that would be in conflict with those of the Fire District? For example: Fire Company members, DiVal Safety, Churchville Fire Equipment, Twin City Ambulance or the Town of Clarence.

Answer: No.

District Question 5: What is your comfort level with personnel matters such as violence in the work place?

Answer: Very comfortable as they have a former Erie County prosecutor on staff and have eleven qualified attorneys.

District Question 6: Do you have a peer rating such as Martindale-Hubbell?

Answer: Yes, Martindale-Hubbell, avvo.com and super lawyer.

District Question 7: Does your firm have a precedence setting case?

Answer: Yes, Zangy versus Greyhound Bus where police and firefighters can recover for injuries sustained. Case went to the Appellate Division and won it was then taken to the Court of Appeals and won.

District Question 8: What is your personal opinion on modified duty?

Answer: Someone with a work related injury and not fully healed should not be out there but the Fire District will set the policy as to how services will be delivered. Modified duty can be problematic and should be judged on a case by case basis.

District Question 9: Do you have anything you would like to add?

Answer: The firm uses lean cost staffing so that a capable individual is used for the work required. Not all work needs to be done by a partner when it is of a level a paralegal or associate can handle. This optimizes both the client and firm resources. Dave would be the partner responsible for determining who will work on any given issue and he can 100% guarantee someone will always respond to every request within 24 hours even if it is to just acknowledge and set the time frame for the full response. Jason reviewed the District's website and found it to be very well managed. He attended the building expansion public hearing and feels that residents could have viewed this resource for information prior to delivering negative comments at the public hearing.

New Membership Process Discussion:

Chairman Garlapo asked for clarification from the Board on what was agreed upon in regard to the new member process. Commissioner Bissonette reported on what he communicated to the Board of Directors at their last meeting. He stated that no future members would receive approval going forward without the Fire District input. All background checks and physicals will be completed prior to membership vote. This will require the prospective candidate to make the effort to complete the physical as several past candidates never completed this requirement once voted in. Members should only be voting on fully qualified candidates in the future. However, anyone currently in the pipeline will continue; the Fire Company should vote on the potential member as scheduled tomorrow night.

Discussion continued in regard to the interview process. It was mentioned that there is outdated information in the interview packet. There should be a list of interview questions so that each applicant is consistently interviewed and is able to walk away with a packet of information that summarizes what is available to, and required of, them as a member. Even better might be to provide this packet of information with the membership application. This information should have the District and Company's expectations so that the individual has the opportunity to review and be prepared to ask questions at the interview.

In summary, the goal is to provide consistency and structure and to ensure proficiency and professionalism. Chairman Garlapo will give Bob Stanley the go ahead for membership vote at the October 7 membership meeting.

Rules and Regulations Update Discussion:

The proposed officer requirement changes are scheduled to take effect with candidates running in the December 2017 election and taking office in January 1, 2018.

Article V – Training and Education: Reviewed the article paragraph by paragraph.

Introductory paragraph is fine as written.

Paragraph 1: discussed the total number of drills to be on the drill schedule as a minimum of 25 and that there will be a minimum of 6 EMS drills. The Board will leave it to the Chief's Office as to whether this document will be published quarterly or annually. Determined the paragraph is fine as written.

Paragraph 2 New Firefighters:

Paragraph a: New member drills don't count as OSHA. First sentence only and the rest comes out. Comments made: However, there should be a safety component in the new member drills that will suffice until a new member receives OSHA. It is the Chief's responsibility to keep the individual safe. New member training is done well but consistent delivery of the message would be improved if there was a training outline to follow.

New Paragraph b: A new member must complete the formal 8 hour OSHA training within 12 months of the start of active duty. (OSHA requirements are for the calendar year.)

Original Paragraph b: Interior firefighters must successfully complete the Firefighter I course (and exterior firefighters the scene support course) within two years of the start of active duty.

Paragraph c: Must complete a nationally recognized first aid, CPR and AED certification within one year of the start of active duty.

Paragraph d: Comment made: One disciplinary clause should be made at the end of the document and not for each paragraph. It might read, The Board of Fire Commissioners may review and administer disciplinary action up to and including dismissal for any failure to complete. May also want an escape clause for lack of course availability.

Rules and Regulations Update Discussion – Article V (continued):

Paragraph 3 Active Duty Firefighters:

Paragraph a: Suggest removal of disciplinary portion of paragraph to be handled in new paragraph near the bottom of the document.

Paragraph b: Draft written using Snyder Fire District’s requirements of ten drills annually (2 EMS and 8 non EMS). Two hour discussion and many points of view presented. Many relevant points to consider and the actual number of drills to be used was hotly debated. In summary, the Board is required to initiate corrective action to deliver proper training to members. There are not enough contact hours on the necessary material to cover the knowledge needed to ensure firefighter safety. The Board has heard many criticisms and been advised of legal exposure and must take action. The Chief’s Office has been instrumental in this draft and is in agreement as presented. The main argument against such increase is the size of the change compared to past practice. An uneasy compromise seemed to be reached with the reduction to 8 total annual drills.

Paragraph c: Suggest removal of this paragraph.

Paragraph d: CPR card must be maintained at all times.

Paragraph e: Suggest removal of this paragraph.

The Board had committed to having a final draft to the Board of Directors. However, due to the late hour, the seriousness of the subject matter and the concerns raised it was agreed that the Board would review the draft meeting minutes and raise any additional concerns in short order. The new goal will be to finalize the entire Rules and Regulations draft at the October 20, 2015 meeting after the public budget hearing and before the start of the regular meeting.

Good of the Fire District:

The district architect met with the town and the suggestion was made to wait until after January 1, 2016 to present the District’s building expansion plan for the required Town Board Super Majority vote (4 votes are needed not the usual 3 vote simple majority). Casilio may not vote due to his Fire Company membership so all other Board members would have to vote positively and it is expected that there is a greater likelihood for a positive outcome by waiting.

MOTION by Schlabach, seconded by Work, to adjourn the meeting at 22:50 hours, carried.

All motions were unanimously carried unless otherwise noted.

Attest,

Kim Lash, Treasurer

cc: Commissioners