



**TOWN OF BILLERICA  
SELECT BOARD  
TOWN COUNSEL SUBCOMMITTEE MINUTES  
AUGUST 14, 2024**

**Members Present:** Vice Chair Dina Favreau and Secretary Michael Rosa

**Staff Present:** Acting Town Manager Clancy Main, and Recording Secretary Dawn McDowell

Secretary Rosa called the meeting to order at 11:04 AM.

**1. Open Microphone**

There was no one for open microphone.

**2. Select Board Subcommittee – Discussion on Contract Language**

Paul DeRensis and Len Kopelman joined the meeting from Brooks and DeRensis.

Secretary Rosa thanked Mr. DeRensis for providing the sample contracts that they used. Under the Retainer Fee Agreement, item #7, could we add a 90-day notice of termination because KP Law left us right after Town Meeting. Mr. DeRensis replied that they could add that but if we are in the middle of trial we cannot leave per the rules of professional ethics. I am in agreement with that. Just so you know under the rules of professional ethics involving attorneys if we were in the middle of a trial We cannot say to you we're gone, you have no lawyer even though the jury is sitting in the box and the judge is on the bench. We cannot do that, we have a professional responsibility that goes beyond being paid, goes beyond. That would not be ethical. There is protection here from the Board of Bar overseers for clients so that you don't get harmed. Vice Chair Favreau stated that the professional ethics are more restrictive than 90 days, so she doesn't believe a time frame is needed. Secretary Rosa stated that we didn't get that from KP Law. They gave us about 30 days and said they were done after the Town Meeting, and just left us hanging. We just received their files, months later, as incomplete as they were. Vice Chair Favreau asked if the rules of professional ethics defined. Mr. DeRensis replied yes. If there are files and they are not turned over, it is a bar offense. Mr. Kopelman added that Stoughton has the same issue with your prior counsel. Secretary Rosa stated that he understands this would protect us if we were in the middle of a court case, but he wants to protect us in the day-to-day operation. Mr. DeRensis stated that we can add the 90-days and a statement that says, "subject to all the requirements of rules of professional ethics governing attorneys and the upon termination the files paper and electronically will be transferred in their entirety within 14 days." Vice Chair Favreau stated that she is concerned that with electronic files, is 2 weeks enough. Mr. DeRensis stated that with previous counsel, none of the electronic records were sent to us. There is a whole portion of the files that are missing. There are not just boxes sitting on a shelf. You are using five lawyers to recreate these files. We're astounded. We would have to get emails from five lawyers to provide a complete file. Secretary Rosa asked what a reasonable time period is. Mr. DeRensis replied about 30 days. Vice Chair Favreau stated that we could go up to 45 for digital copies. Mr. DeRensis stated that the files are the town's property. Secretary Rosa stated that the sooner the better. Everyone agreed that a flat 30 days to get all documents transferred.

Mr. Kopelman stated that there are files that should have been destroyed since they were old and not valid. Vice Chair Favreau asked if KP Law was following the record retention and Sarbanes Oxley laws? Did they not discard per the retention laws? Mr. DeRensis yes and no. There are files that should have been discarded. Mr. DeRensis added that the notes the lawyers take are very important to the status of the case. What was missing from the files, what's their theory of the case? What is the plan, what's the strategy that the board has approved? We don't have a clue, so we have had to reinvent the wheel in every case.



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Secretary Rosa asked what information we can get to you on the deOliveira case. He sent you what he had and perhaps we can send you the DPW files. Mr. DeRensis replied when we got the file, there was nothing in the file on what was done to resolve the case. When we asked the lawyers handling the case, they said we've never has a discussion about resolving it. So, we were left with, it's just not a good idea to have lawsuits going on without ever talking to the other side. And low and behold we learned from the town that there had been discussions by town officials directly with the plaintiffs and none of that was in the file and we don't know how that got to and how that fits into things, we don't have those details. There isn't a memo. Many lawyers do an exit memo. There are no memos at all. The insurance lawyer never talked with the plaintiffs. We didn't know that Town officials had talked with the plaintiffs originally. There was no record of any communications. There were no details.

Secretary Rosa stated that in the Fee Structure section, we should copy Section 20.1 from the Select Board Policies and Procedures. This outlines the process of who is allowed to contact Town Counsel. Secretary Rosa mentioned Bullet 2 and stated in our policies and procedures 20.1 outlines who can contact town counsel. Vice Chair Favreau stated that the policy is more restrictive, and we should insert that into the contract here. Secretary Rosa read the policy into record. All agreed that requests for opinions of counsel will go to the Town Manager first before contacting town counsel directly.

Secretary Rosa stated that under Exceptions, Item #4, all cases are adversarial and the phrase "incorporating the definition from the most recent town counsel contract" should be deleted. The term adversarial seems broad. Secretary Rosa asked what an item like MBTA zoning would be considered. Mr. DeRensis stated that would be handled by the litigation team. Mr. DeRensis stated that we are getting 4-8 inquiries per day. We get management, political and operational questions. There are a lot of questions due to the transition of legal counsel and an interim/acting Town Manager. We should be handling legal issues, and the requests should be limited and managed by the Town Manager. Mr. DeRensis stated in our firm it is considered litigation because it does become adversarial, and we put a lot of effort into that and has the potential for fines against the community. It is like a mini trial. It is handled by our litigation team, not our general counsel. The town has been going through some transitions, some of which are political in nature, some are managerial, and with all those transition issues are not just legal, there has to be some limit. Mr. Main stated previous Open Meeting Law responses were handled as a part of the regular retainer.

Vice Chair Favreau stated that what she is hearing is that the concern is that due to the nature of a lot of the politics that you referenced, during transition periods there are a lot of OML complaints that come in just to raise the level of heat and that may be why there is a concern, but most of the time a violation isn't found. It is due to politics on why there are so many Open Meeting Law complaints and Public Records Request and would these responses be covered. Would you be willing to put that under the retainer? Mr. DeRensis stated that we would not want to say yes until we see if this continues because this would require a larger retainer. Secretary Rosa stated that was one of the things he noticed was a huge difference.

Secretary Rosa stated that under services covered by the retainer, Item #4, Town Counsel would review a warrant article that would change the Charter, would that be covered because all changes to the Town Charter start at Town Meeting. Mr. DeRensis stated that you would need special counsel for Charter changes, but review of Town Meeting articles is covered. Vice Chair Favreau stated that her understanding of the language is that our Charter and Bylaws are reviewed every year ending in 0 and 5 and we would need counsel review, but that falls outside of the retainer agreement. Mr. DeRensis stated that would fall under exclusions. Secretary Rosa asked if this would be the same as a zoning review. Mr. DeRensis replied yes, it is a huge undertaking and is a specialty and would be excluded.



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Secretary Rosa asked what the last bullet means under exclusions. Mr. DeRensis stated for example, there was a murder trial, and it involved town employees. It was a huge trial and would not fall under normal legal services. We are partners with the Town and want to work with you. If the retainer is too high, we'll come to you and talk about it.

Mr. Main asked if you get to know us better, does it become easier. Mr. DeRensis replied it is the same process. It will become simpler when it settles down. I just have this impression that there are a lot of transitions with political undertones. We don't want to be involved with political undertones. We want to support everybody, and we don't want to get into this side or that side. I think as that settles down, so will the need for counsel.

Secretary Rosa stated that the Select Board oversees all lawsuits for the town according to the General Bylaw so there should be a paragraph added for that. Essentially that will provide the rules of engagement for all parties and will be important to insert that into the language.

Vice Chair Favreau stated that we should set up a turnaround time for all legal opinions. Mr. DeRensis stated that we need to get complete requests with all the documentation before we can start the request. Vice Chair Favreau stated that the Town should set a policy for submitting a request to counsel on what is required. Mr. DeRensis for example, if there is a request to look at something that was created by the Town Meeting, we should have a copy of the General Bylaw, the Finance Committee recommendation, the article, and the minutes of the action from the Town Meeting. Mr. Main stated that we need to know what you need. This is a new relationship, and every request is different. We are also looking for acknowledgement of receipt of the request and what is needed if anything is missing. Vice Chair Favreau asked if it is a complete request, how long does it take to respond. Mr. DeRensis replied usually that day. If we need more time, we will let the Town know. Mr. DeRensis stated that we don't understand some of the requests. In other towns, everything goes through the Town Manager's office so there can be some control and he would know if there were similar requests. The Town needs to communicate internally. We should be the last stop. Secretary Rosa agreed that all Boards and Commissions should go through the Town Manager's office per the Select Board policies and procedures Section 20.1 and not send to Town Counsel directly except the Select Board. Secretary Rosa stated that if there are things that can make it easier, then let us know. Mr. Main stated that we need to know what the normal things are. If there are standard requests, that is easy, but we don't know what Town Counsel is looking for. Mr. DeRensis stated that we need agreement of facts; for example, is a person appointed to a committee or not appointed. Mr. DeRensis stated that the Town Manager should prioritize the issues.

Secretary Rosa, in our contract, Section 3 should reference the General Bylaw, Section 31.0-31.4. Mr. DeRensis stated that if you want a turnaround time, we should incorporate that into the town's policy.

Vice Chair Favreau asked if the billing will stay the same once the contract is signed showing the time. Mr. DeRensis stated that typically we wouldn't provide that on the retainer side because it can be subject to review and part of public record, but it can be produced if needed. The time spent excluded from the retainer would. Vice Chair Favreau stated that she would like to see how much time is spent on different issues. Mr. DeRensis stated that you should go to us last and not first. Secretary Rosa stated that we should get the information to staff and set the procedure. Vice Chair Favreau stated that she disagrees in all cases because sometimes when you have a legal opinion up front you can rule out other requests.

A recess was called from 12:15 PM to 12:27 PM.

Secretary Rosa stated that the next item will be the retainer. The billables have been provided since taking over. Mr. DeRensis stated that Mr. Kopelman hasn't billed for anything, and he is nervous about the retainer piece.



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Vice Chair Favreau stated that we need to get to a number. Mr. DeRensis stated that we need to get to the real numbers, and he doesn't think that we have seen those yet. Summer is usually the quietest time frame. Vice Chair Favreau stated that there was a 23% reduction from prior billing, and it will hopefully go down another 12%. Mr. DeRensis stated that August is typically the quietest month of the year. Mr. Main stated that August is typically the same as other months based on previous years. Secretary Rosa stated that if you look at the bill for July and remove all the KP issues, general real estate issues, and labor issues then that removes about \$15,000. Vice Chair Favreau agreed, general litigation isn't covered. Secretary Rosa stated that only a small portion of the bill is covered by the contract. If you add it up, \$6,334 is under contract. Mr. DeRensis stated that there is an emphasis on litigation because of the urgency instead of the normal retainer issues. The attorneys normally that would work on retainer issues have been working on the litigation issues. Mr. DeRensis stated that we should set it to \$12,500. Secretary Rosa stated that is double what the billables show, what justifies that? Mr. DeRensis stated we need to be working on day-to-day issues, but we've been pushing them off to deal with all these other issues. Mr. DeRensis stated that if the retainer is fully used, it shouldn't be less.

Secretary Rosa stated that he would like \$11,500 and see where it goes.

Vice Chair Favreau stated that she was looking to start at \$10,500 and asked if the retainer gets used, does it convert to hourly. Mr. DeRensis replied no, and this encourages usage of Town Counsel. Secretary Rosa replied he doesn't agree that it encourages people to use town counsel more. Typical staff would not know how much is left in the retainer. He doesn't see that internally as that being an issue. Mr. DeRensis stated that he has had Select Board members say the service is free under the retainer. Vice Chair Favreau stated that nothing is free. Mr. DeRensis suggested \$12,000. Secretary Rosa stated that he usually starts low but understands how much is going on right now. He hopes this is a long-term relationship.

Vice Chair Favreau stated that we can build in a review at 6 months to see where we are in the baseline. If it is too high or too low, we can agree to negotiate. Mr. DeRensis stated that we should wait until September/October to get the real numbers for retainer information. Vice Chair Favreau stated that we could start at \$11,500 with a review in 6 months. Mr. DeRensis agreed.

Secretary Rosa stated once the document is updated, we will review and meet once more then bring it to the Select Board to sign. Mr. DeRensis asked that the internal policy should be worked on. Secretary Rosa stated yes, we will work on that, and have you review since it affects you.

**MOTION** - Vice Chair Favreau made a motion to adjourn the subcommittee meeting at 12:51 PM. The motion was seconded by Secretary Rosa and unanimously voted 2-0-0.

*Respectfully Submitted by Dawn McDowell,  
Recording Secretary*

**Exhibits for the Select Board Town Counsel Subcommittee Meeting – August 14, 2024**

1. **Open Microphone** – No Exhibits
2. **Select Board Subcommittee – Discussion on Contract Language** – Invoice from Brooks & DeRensis dated 08/12/24, Sample contract for retainer and hourly provided by Brooks & DeRensis undated.

**Approved On: September 16, 2024**