

This is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and adjunct professor at McGeorge School of Law in its Capital Lawyering program. Today's podcast is on helping your client's legal problem by changing the law.

Most of the time in law school we spend reviewing judicial decisions, learning to think like a lawyer, and basically focus on the traditional development of the common law. But many jurisdictions, including the state of California, are statutory states.

Our legal training is based largely on case law interpretation, and so law students spend very little time on looking at statutory development and construction. Law schools rarely teach aspiring lawyers about how laws and regulations are made, or how to change those laws or regulations to benefit your client.

Any lawyer can apply the facts of his or her case to the law as it exists today, but a really good lawyer is one who would look closely at changing the law to benefit his or her client's legal position.

Lawyers today will be better able to think about changing the law -- statutes or regulations -- by understanding the lawmaking process and the rule-making process, as well as the role of lobbyists in these processes at the state and local levels.

What should you do as a lawyer for your client? I think a lawyer should complete a policy analysis of any issue facing his or her client and potential changes to the law that could be made, either statutory or regulatory, that would benefit his or her client.

The attorney in these instances needs to have an understanding of the various policy-making venues, including the legislative and administrative branches of government, as well as an ability to make decisions regarding which venue provides the greatest strategic advantage and chances for success for resolving his or her client's legal problem.

Most importantly, lawyers need to have a firm understanding of the area of the law and what has led to the current statutory or regulatory issue, and what are the pros and the cons of a particular approach to changing that statute or regulation? Look at using a lobbyist to help change the law, or the lawyer himself or herself could make that similar attempt.

A successful lobbyist is one who's knowledgeable regarding the subject matter of a legislative or regulatory problem, who has relationships with key elected and appointed officials and their staff, and who can impact a particular area of the law.

An effective lobbyist will understand the politics and policy regarding a particular subject matter and has the ability to make statutory or regulatory changes. Then, just like a lawyer, a lobbyist advocates for his or her client's position with those responsive decision-makers.

As a lawyer advising your client, you should ask some of the following questions in utilizing a government affairs professional.

What's your particular experience in this area of the law? Who are your contacts with key legislative and administrative officials? Are there any potential client conflicts?

How much time and effort will be required to address this particular problem?  
Demonstrate a fundamental understanding of the client's issue?

Have you represented similar clients in the past? What has been your past success in this area of the law? How did you achieve those successes?

If there were failures, what would you do to approach the issue differently, and of course, what sort of fee would be charged?

A lawyer properly advising his or her client to change a statute or regulation should consider some of the following obstacles.

Is there a sufficient policy justification to make the proposed change in the law? Are there any fiscal concerns with the proposed law change?

Does a change to a statute or a regulation result in harming one group or helping another? Which particular interest groups might be lined up for or against your proposed law change?

Is there any grassroots or media component to support one side of the proposal or the other? Is the majority party in support or in opposition to your proposed law change?

How do the staff view your proposal? What is the governor's office view of your law change?

Basically, a well-rounded lawyer will appreciate that solving his or her client's legal problem can sometimes be accomplished by actually changing the law in those cases where the law may not be favorable to a potential client outcome or position.

Understanding the role of a lobbyist or government affairs professional in the legislative or regulatory process can better prepare a lawyer for advising his or her client about the alternative of changing the underlying law.

In today's legal environment, providing a client with all possible avenues will be most valuable to your relationship with your client. We hope you enjoyed today's podcast.