

March 11, 1999

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

FISCAL YEAR 1999 CIVIL LITIGATION UPDATE

The City Attorney is responsible for defending the City and its boards, commissions, officers, and employees from lawsuits. Currently, twenty-one deputy city attorneys spend at least half of their time defending civil lawsuits. Many of these attorneys are recognized as the top trial lawyers in the community. They have built the City Attorney's Office reputation as tenacious, talented, and unwilling to recommend a settlement when a trial will better resolve the matter. Unlike attorneys who bill by the hour or are paid by a contingency fee agreement, deputy city attorneys can defend cases looking only to the good of the client to inform their choices.

With one new lawsuit being served on the City virtually every business day, there is no shortage of work for the civil litigators in the City Attorney's Office. The litigators handle about 500 open cases at any one time.<sup>1</sup> During the first six months of this fiscal year, 145 new lawsuits were filed against the City, a 7.5 percent increase over the same period last year. The lawsuits vary greatly in subject matter and dollar value. Cases defended include personal injury lawsuits; (e.g., "trip and falls," auto accidents); civil rights lawsuits brought against police officers; challenges to land use decisions, including environmental challenges; employment discrimination claims; and breach of contract actions.

Between July 1, 1998 and January 31, 1999, deputy city attorneys won seven civil cases at trial. These cases included a trip and fall on City property, allegations of police use of excessive force, and a lawsuit brought against a City Council member. Each assigned attorney is now pursuing recovery of the City's costs of suit in these cases.

In ninety-three cases disposed of during the first seven months of this fiscal year, the City paid nothing. In some instances, plaintiffs were persuaded to dismiss largely frivolous lawsuits by the assigned deputy city attorney. In other cases, motions were filed by the deputy city attorney to fight liability in cases with millions of dollars of exposure for the City. The motions end cases either by the judge dismissing the case, or a judgment being entered in favor of the City. For comparison purposes, there were only forty-six cases settled for more than \$1000 during the same period.

The heavy volume of cases brought against the City and the serious exposure imposed by those cases requires litigators to devote most of their time to defense work. However, all litigators spend some time working to recover money from those who sue the City and two

attorneys in the Office spend a significant part of their time on civil enforcement actions. Those two attorneys pursue unpaid T.O.T., unpaid water bills, matters with debtors in bankruptcy, and long-term disability intervention recoveries, among other things.

A new, early intervention strategy employed to recover long-term disability benefits looks particularly promising. In the past, the City seldom received fair reimbursement of long-term disability benefits when an employee sued a third party for injuries. The lawsuit against the third party was always brought by a private attorney who had no motivation to properly reimburse the City. Often, settlements of third party lawsuits would characterize settlement monies as payments for "pain and suffering" only, or would allocate a large portion of the settlement as attorney's fees, leaving little or no money to reimburse the City. The Civil Enforcement Unit has begun intervening in those third-party lawsuits so that the City is actually a party in the lawsuit when the employee's settlement is negotiated. This strategy makes the City a player at an early stage and puts the City in a strong negotiating position.

The efforts of the City Attorney's Civil Enforcement Unit are sending an important message of fiscal responsibility to the community. In the first seven months of this fiscal year, the City Attorney's Civil Enforcement Unit has recovered \$510,000.

A second specialized litigation unit in the City Attorney's Office was authorized at the beginning of this fiscal year and is now working at full strength. The Construction Litigation Group was formed to defend the City from claims arising from the City's booming public works construction. Currently the City has over \$1.5 billion committed to public works construction projects. Tens of millions of dollars in construction claims are already pending against the City, and many of the projects are not yet completed. The Construction Litigation Group is proactively working on construction claims, using alternative dispute resolution techniques, and is developing the expertise to successfully defend the City from lawsuits filed against it. This specialized team is well positioned to keep the payment of claims on construction matters well below the industry standard.

By using staff wisely and taking advantage of the tremendous expertise in the civil litigation group, the City Attorney is producing more with fewer resources. While litigators may specialize to some extent, all litigators have the flexibility to work in new areas. For example, without any tax or election litigation specialist, every tax and election challenge has been successfully defended in the two years since I took office. Responding quickly and with flexibility, moving proactively, and intervening early are now inherent parts of every deputy city attorney's practice. We look forward to continued challenges and success on behalf of the City.

Respectfully submitted,

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City Attorney

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