COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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AUDITOR-CONTROLLER

WENDY L. WATANABE
CHIEF DEPUTY

October 5, 2007

TO: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Don Knabe
Supervisor Michael D. Antonovich

FROM: J. Tyler McCauley
Auditor-Controller

SUBJECT: **FOLLOW-UP REVIEW OF COUNTY COUNSEL LITIGATION COST MANAGEMENT**

On March 27, 2007, the Board directed the Auditor-Controller to report on County Counsel's progress in implementing the recommendations from our January 29, 2007 report on Litigation Cost Management. The Board also requested us to verify the expanded use of the Risk Management Information System (RMIS) and to evaluate the usefulness and quality of management reports used to monitor case status, budgetary controls and document case decisions be evaluated.

We reviewed ten recommendations that County Counsel stated they had implemented or substantially implemented to date. We evaluated case file documentation (e.g., Case Evaluation Plans (CEPs), roundtable documentation, etc.) for a sample of cases and interviewed Department management and staff.

County Counsel has taken a number of significant steps to implement the recommendations from our January 2007 report. For example, County Counsel indicated that they are developing a new Litigation Severity Index and Management Protocol (Protocol). The Protocol will include a system for rating cases based on the potential monetary exposure, impact on public policy, etc., which, among other things, will determine the frequency and timing of roundtables. According to County Counsel, the new Litigation Cost Manager (hired June 25, 2007) will review and assist in finalizing

the Protocol and will develop procedures for reviewing outside counsel bills and guidelines for estimating fees and costs.

County Counsel has also recently expanded the use of RMIS. For example, County Counsel added new fields to RMIS such as CEP and roundtable dates and case priority ratings, and has a new procedure for scanning all CEPs and roundtable notes into RMIS to allow greater access to this information. In addition, County Counsel is developing a COGNOS system that will allow users to generate various management/exception reports from RMIS that will further enhance County Counsel's ability to monitor the status of cases and compliance with its litigation procedures. County Counsel is working with the COGNOS contractor to develop implementation timeframes for the COGNOS system.

Status of Recommendations

Overall, County Counsel has significantly improved the timeliness and documentation of CEPs and roundtables, as well as the accuracy of Quarterly Litigation Reports. Of the ten recommendations we reviewed, five are fully implemented, two are substantially implemented and three are partially implemented. County Counsel needs to complete the development of systems to monitor the status of cases and compliance with the March 2006 procedures, include additional documentation for cost benefit analyses, and ensure RMIS access is based on each user's duties.

In order to test County Counsel's implementation of our recommendations relating to CEPs and roundtables (i.e., recommendations 1, 7, 11 and 13), we selected samples of cases to which County Counsel's procedures applied, and for which CEPs were due or roundtables should have taken place from February to May 2007. Due to the narrow time frame reviewed, and the differing time requirements for CEPs and roundtables, the samples we selected to review recommendations related to CEPs differed from our samples for roundtables.

The implementation status of the recommendations is discussed below.

Recommendation 1 from the January 29, 2007 Report

County Counsel management monitor to ensure initial CEPs are completed in a timely manner, include all required information, and are properly approved.

Current Status: SUBSTANTIALLY IMPLEMENTED

In our prior review, we noted that initial CEPs were not always completed on time, did not always include all the required information and were not always properly approved.

Seventeen of the 21 CEPs we examined in our prior review (81%) were completed an average of 61 days late.

Our current review indicates that County Counsel has significantly improved the timeliness of initial CEPs. We reviewed ten cases and noted that eight of the initial CEPs (80%) were completed on time, and the two CEPs that were not submitted on time were submitted an average of 29 days late. As noted earlier, County Counsel is working on an automated system to monitor to ensure CEPs are completed on time. All ten of the CEPs we reviewed contained substantially all of the required information.

We also noted that one of the eight initial CEPs that should have been approved did not have a signature from the TPA indicating that the CEP had been approved. This is a marked improvement from our prior review where 13 of 19 initial CEPs were not approved.

County Counsel's March 2006 procedures do not require supervisors to sign/initial CEPs for in-house cases indicating they have been approved, and the CEPs for the two in-house cases we reviewed were not signed or initialed. County Counsel indicated that, if a supervisor places a CEP in the case file, that indicates that the CEP was approved. To ensure documentation of management review of proposed litigation strategy, we recommend that County Counsel revise the March 2006 procedures to include having supervisors sign/initial CEPs for in-house cases.

County Counsel is developing a system to use RMIS to identify cases where an initial CEP was not submitted. County Counsel added a field to record CEP dates in RMIS and began entering the dates around March 2007. At the time of our current review, initial CEP dates had been entered in RMIS for three of ten cases in our sample.

While this system is under development, County Counsel indicated they monitored timely completion of CEPs by tracking the due dates on a spreadsheet. We noted there were cases on the spreadsheet where the CEPs were past due, but these cases were not identified on the list as an exception, and there was no indication that any follow up had been performed. County Counsel told us they did not use the spreadsheet to identify and follow up on missing or late CEPs. It appears the spreadsheet was not consistently updated, since none of the nine CEPs in our sample that had been submitted at the time of our review were recorded as received on the spreadsheet.

County Counsel acknowledged that previously there was minimal effective tracking or monitoring of CEPs. However, County Counsel stated that beginning in March 2007, new staff was assigned to oversee this function, and they have updated past procedures and established new procedures. As an example, while previously a spreadsheet had been created to record CEP due dates, it was not being consistently updated, nor was there any follow up. The new staff has worked to bring that

spreadsheet current, and County Counsel states it is now being used consistently and effectively to record and track CEP due dates.

County Counsel also stated they have started sending reminder emails to supervising attorneys in each division for CEPs that are due or will soon be due and will send follow up reminders if a CEP is not received. These reminders are based on the tracking spreadsheet discussed above. In addition, County Counsel stated they now follow up with attorneys to get a signed CEP if they are submitted without a signature to document supervisory approval. County Counsel's new procedures should effectively implement CEP tracking.

Recommendation

1. **County Counsel management revise the March 2006 procedures to require supervisors to document approval of CEPs for in-house cases.**

Recommendation 7 from the January 29, 2007 Report

County Counsel management ensure that cost-benefit analyses are completed and documented in CEPs and roundtable discussions.

Current Status: PARTIALLY IMPLEMENTED

A cost-benefit (or liability/exposure) analysis is an evaluation of the potential costs of the case, including defense costs, potential liability, and the likelihood of an adverse judgment. This analysis is an integral part of the decision to settle or defend a case, and should be performed as soon as possible and reevaluated throughout the case.

In our prior report, we noted that cost-benefit analyses were not always included in CEPs or documented in roundtable discussions. Because of concerns raised by the Board regarding cases that sometimes settle for less than the legal costs incurred, which could indicate it may have been more cost effective to settle the case earlier, we recommended that County Counsel management ensure cost-benefit analyses are completed and documented in CEPs and roundtable discussions. County Counsel's response indicated that they instructed staff to take more comprehensive notes at roundtables to document the cost analysis that takes place, and that CEPs already contain the information that constitutes a cost-benefit analysis.

We reviewed ten CEPs and ten six-month roundtables to determine if County Counsel is adequately documenting cost information in CEPs and roundtables (e.g., fees, costs, potential liability, settlement/demand, etc.), including conclusions reached/exit strategies. This data is consistent with County Counsel's CEP and roundtable standard forms and County Counsel's March 2006 procedures. Overall, we noted a significant

improvement in roundtable documentation. We did note that County Counsel staff can improve the documentation of cost-benefit information and/or conclusions reached.

Case Evaluation Plans

- Seven of the ten CEPs reviewed contained substantially all the cost information required on the CEP form. It should be noted that, while the CEPs contained substantially all of the cost information, the CEPs do not always provide an explanation for the conclusions based on the information. For example, one CEP had a recommended case strategy of "go to trial". However, the estimated verdict range in the CEP was $0 to $5 million, the estimated settlement value was $50,000 to $100,000, and estimated fees and costs to defend were $275,000. The CEP does not indicate why settlement should not be pursued, when it appeared it may have been cost effective do so.

- Three CEPs did not contain substantially all the cost information required on the form. Outside counsel indicated that it was too soon to provide a financial analysis of the cases. However, in at least one of the three cases, it appears some of the information may have been available when the CEP was prepared. In this case, the CEP does not indicate the possibility of early settlement. In a letter to outside counsel, the TPA suggests settlement might be considered, "sooner rather than later." The letter was dated ten days before the CEP. It appears early settlement could have been discussed in the CEP, but was not.

Six-month Roundtables

- Eight of the ten six-month roundtables (80%) contained substantially all cost information on the roundtable form, and notes for seven of the eight roundtables (88%) contained a conclusion that appeared consistent with the roundtable documentation. In the eighth case, the cost information did not appear to adequately support the decision to go to trial. The CEP budget for the case was $175,000 for fees and costs, the indemnity reserve was raised to $350,000, with a 25-75 percent of liability, and roundtable notes indicated an informal demand of $200,000. The roundtable documentation did not indicate why settlement should not be pursued, even though it appears it may have been more cost effective to do so.

- Two of ten six-month roundtable notes did not contain all the cost information on the roundtable form, although it appears at least some of this information was available. In one of the two cases, the roundtable notes (hard copy and RMIS notes) did not contain information on fees, costs and estimated liability, although estimated fees and costs were known at the time of the six-month roundtable. There is no documentation that the estimated fees and costs of $166,000 were discussed or compared to the $45,000 budgeted fees and costs in RMIS. In the other case, the

six-month roundtable notes do not contain the budget for potential liability. The quarterly roundtable notes indicate that the RMIS budget for potential liability should be increased to $95,000, which was done. The quarterly roundtable notes do not give any reason for this increase, and the six-month roundtable notes do not contain any discussion of potential liability estimates.

Quarterly Roundtables

County Counsel stated their procedures do not require a cost-benefit analysis at quarterly roundtables, and we noted that quarterly roundtable notes typically did not contain these analyses.

Cost-benefit analyses should be completed in the initial CEPs and at six-month roundtables. Because initial CEPs are prepared very early in the case (two of the ten CEPs we reviewed were prepared within two weeks after case assignment), there may not always be enough information to prepare a cost-benefit analysis. Many of the initial CEPs we reviewed focused on preliminary case work (e.g., interview witnesses, depose plaintiff, etc.) before there is enough information to evaluate the costs.

In addition, six-month roundtables (where cost-benefit analyses should be completed) are only required if a case is initially budgeted for $100,000 or more. As a result, if there is not enough information to prepare a cost-benefit analysis when the CEP is prepared, and the case is initially budgeted at less than $100,000, there may not be a cost-benefit analysis prepared until the attorney prepares an amended CEP, which could be after a significant amount of time has passed. For one case we reviewed, the outside attorney indicated it was premature to include cost information in the CEP, and there is no documentation of a cost-benefit analysis at the six-month roundtable. Cases like this indicate there may be a potential for overlooking the cost-benefit analysis altogether, since there is no requirement to conduct a cost-benefit analysis at quarterly roundtables.

As a result of the issues discussed above, County Counsel may not prepare cost-benefit analyses for all cases, or may not prepare them timely. County Counsel should revise its existing procedures and establish specific requirements/timeframes for documenting cost-benefit analyses. As the outside legal consultant indicated in our prior review, the monetary valuations of a case change as new facts emerge, and attorneys need to closely monitor and regularly document the shifting dynamics between case valuation and rising legal fees.

The outside consultant indicated that case valuations should be updated every three months. County Counsel's current procedures state that the primary purpose of quarterly roundtables is to review fees and costs to date, and compare them to the budget. In our opinion, the quarterly roundtables should also include evaluating the

cost-benefit of the case strategy. Accordingly, we recommend County Counsel revise their procedures to require attorneys to prepare/update a cost-benefit analysis for each case and review these analyses at the quarterly roundtables or similar forums.

Recommendation

2. **County Counsel revise their procedures to require attorneys to prepare/update a cost-benefit analysis for each case and review these analyses at the quarterly roundtables or similar forums.**

Recommendation 11 from the January 29, 2007 Report

County Counsel management clearly reemphasize that required roundtables must be held, and continuously monitor for compliance, using a RMIS exception report or another tracking system.

Current Status: SUBSTANTIALLY IMPLEMENTED

In our prior report, we noted that only ten of 16 required six-month roundtables (63%) and 11 of 90 quarterly roundtables (12%) were held. Based on our current review, County Counsel conducted all the required six-month roundtables. County Counsel can make additional improvements in this area by more consistently updating their current tracking spreadsheet.

County Counsel held the required six-month roundtables for the ten cases in our sample. In addition, we noted that eight of ten required quarterly roundtables (80%) were held. The two missing roundtables were for in-house cases. County Counsel told us they do not hold quarterly roundtables for in-house cases. While the March 2006 procedures state that each County Counsel division should conduct quarterly roundtables for in-house cases, County Counsel told us that instead of having quarterly roundtables, division chiefs receive monthly or quarterly reports for each in-house case and review the reports with the attorney handling the case.

County Counsel uses a spreadsheet to calculate and record six-month roundtable dates. The staff members who prepare the spreadsheet use it to schedule six-month roundtables for non-TPA cases (TPAs are responsible for scheduling six-month roundtables for their cases), notify the participants and prepare the roundtable calendar. These staff members are also responsible for attending the roundtables and ensuring notes are taken and forwarded for scanning into RMIS. County Counsel also stated that follow up emails are sent to assure those notes are in fact forwarded.

At the time of our review, we noted that County Counsel had not consistently updated the case tracking spreadsheet. For example, dates for two of six six-month roundtables

in our sample that had taken place at the time of our review were not recorded on the spreadsheet, and a date was recorded for one roundtable that had not taken place. In addition, we noted two non-TPA cases for which it appears six-month roundtables should have been held, but were not, and there was no indication on the spreadsheet that any follow-up was performed.

As previously discussed, County Counsel has added fields to RMIS to record roundtable dates and is developing a COGNOS reporting system to generate RMIS exception reports for roundtables not held.

Recommendation 13 from the January 29, 2007 Report

County Counsel management ensure roundtables are adequately documented, including date, attendees, and purpose of roundtables, and that a copy of the roundtable documentation is maintained in the case file.

Current Status: IMPLEMENTED

In our prior report, we noted that County Counsel staff did not always fully document the roundtables. For example, roundtable documentation did not always include the date, attendees, purpose and/or conclusions reached at roundtables. County Counsel responded that they have improved documentation of roundtables.

We noted that County Counsel has significantly improved documentation of roundtables. We reviewed the documentation for ten cases for which six-month and/or quarterly roundtables should have been held, and noted that the documentation included the date, attendees, and some of the roundtable discussion. In addition, notes for seven of nine (78%) six-month and seven of eight (88%) quarterly roundtables indicated the purpose of the roundtable (i.e., quarterly or six-month roundtable). County Counsel management should continue to ensure roundtable notes include an adequate record of roundtable discussions.

Recommendation 28 from the January 29, 2007 Report

County Counsel management revise the 2006 litigation procedures to specify what data divisions should update in RMIS and the frequency of the required updates.

Current Status: IMPLEMENTED

In our prior report, we noted that County Counsel procedures did not specify the data that County Counsel divisions need to update in RMIS or the frequency of the updates.

County Counsel responded that mandatory RMIS fields have been identified and communicated to attorneys.

We noted that County Counsel's RMIS team now sends monthly emails to attorneys reminding them to update the required fields. In addition, County Counsel stated they plan to include mandatory update fields and the frequency of required updates in the RMIS manual currently under development.

Recommendation 29 from the January 29, 2007 Report

County Counsel management ensure the Department has sufficient staff available to generate RMIS reports.

Current Status: IMPLEMENTED

During our prior review, we noted that only one County Counsel employee could generate RMIS reports, which may have caused delays in obtaining lower priority reports. County Counsel recently hired a programmer and a contract employee to assist with IT projects, which gives the RMIS programmer more time to generate RMIS reports for staff. County Counsel is also developing a COGNOS system to allow end users to create their own RMIS reports, reducing Counsel's reliance on programmers. Once the COGNOS system is implemented, County Counsel management stated they will reevaluate the need to train other IT staff on RMIS or COGNOS reports.

Recommendation 32 from the January 29, 2007 Report

County Counsel management immediately review all RMIS user access profiles to ensure access is restricted to each user's duties, and review all user access at least annually, whenever employees duties change, or when an employee leaves the Department.

Current Status: PARTIALLY IMPLEMENTED

County Counsel has reviewed user access profiles of the Department's legal staff and adjusted access as they believed necessary. However, Counsel's review may not have addressed all of the access issues. Specifically, County Counsel indicated they were unaware that our recommendation related to all users, including users with financial access.

We believe County Counsel should also review profiles for users with financial access because these users can update payee information, increase case budgets, and some can issue checks. This lack of separation of duties could result in inappropriate payments.

We also noted that County Counsel's access profiles allow 89 users to significantly increase case budgets. Case budgets are part of County Counsel's financial controls because payments are limited to the amount of the budget.

We recommend that County Counsel expand their review of RMIS access profiles to financial personnel to ensure that adequate separation of duties is maintained and consider limiting the number of personnel who are able to increase case budgets above a specific amount.

During our review, County Counsel developed procedures for reviewing RMIS user access profiles on an ongoing basis. However, we noted changes to some County Counsel employees' user access that County Counsel's RMIS administrator could not explain. The administrator thought that the CEO or the RMIS contractor may have made the changes, but we were unable to confirm this because RMIS does not show who changed user access, and County Counsel does not track their changes to user profiles. County Counsel's RMIS administrator recently sent an email to the CEO and the RMIS contractor stating that all requests for profile changes should be directed to County Counsel. To ensure no unauthorized changes are made, County Counsel should formalize the user access update process by requiring written requests for changes and tracking any changes.

Recommendations

County Counsel management:

3. **Review RMIS access profiles of financial personnel, ensure that adequate separation of duties is maintained, and consider limiting the number of personnel who are able to increase case budgets above a specific amount.**

4. **Require written requests to add or update RMIS user profiles and track any changes.**

Recommendation 34 from the January 29, 2007 Report

County Counsel management include in-house costs for supervising TPA cases in the in-house fees reported in the Quarterly Litigation Reports.

Current Status: PARTIALLY IMPLEMENTED

In our prior review, we noted that time in-house attorneys spent overseeing TPA cases was not included in in-house fees in the Quarterly Litigation Reports. This understates in-house litigation fees. County Counsel's response stated that all time billed to specific cases is included in in-house fees in the Quarterly Litigation Reports. However, we

noted County Counsel's procedures require attorneys to charge time spent supervising TPA cases to RMIS codes for TPA oversight, not to a specific case.

We reviewed in-house fees reported in the Quarterly Litigation Reports for the 2nd and 3rd quarters of FY 2006-07 and noted that in-house fees charged to RMIS codes for TPA oversight totaling $750,000 were not included in the reports. Because RMIS codes for TPA oversight were classified as non-litigation, fees charged to these codes were excluded from reported litigation costs.

County Counsel indicated that not all of the TPA oversight costs should be included in the quarterly reports as litigation costs. Counsel indicated that, in the future, time spent at roundtables for TPA cases will be reported as litigation costs. However, County Counsel believes that the remainder of the time spent on TPA cases should continue to be charged to TPA oversight as a risk management function and not reported as litigation cost, because they believe it is not a litigation function. County Counsel believes this approach will resolve the issue of classifying litigation costs. We will review County Counsel's approach during our next follow up review.

Recommendation 35 from the January 29, 2007 Report

County Counsel management develop a standard, verifiable date for reporting judgments and settlements to ensure they are reported in the correct period.

Current Status: IMPLEMENTED

In our prior review, we noted inconsistencies in the date used to determine when a settlement should be reported. County Counsel stated that they now use the date the appropriate party (the Board, Claims Board, or County Counsel) approves the settlement to determine the reporting period. We reviewed all cases reported as settled for over $20,000 in the 2nd and 3rd quarter fiscal year 2006-07 Quarterly Litigation Reports and noted County Counsel reported settlements in the correct period using the new approval date.

Recommendation 36 from the January 29, 2007 Report

County Counsel management ensure future Quarterly Litigation Reports are accurate.

Current Status: IMPLEMENTED

In our prior review, we noted numerous inaccuracies in the Quarterly Litigation Reports, such as dollar amounts that did not agree between various exhibits in the same report; settlements, judgments and dismissals that were reported in the wrong period; and

various factual and mathematical inaccuracies. We reviewed the Quarterly Litigation Reports for the 2nd and 3rd quarters of FY 2006-07 and noted significant improvement in the report accuracy. For example, the schedules totaled correctly; the reports were mathematically correct; and settlements, judgments and dismissals were reported in the correct period, based on the reported date resolved.

Acknowledgment

We discussed our report with County Counsel management on July 19 and August 15, 2007. County Counsel's initial response (attached) states that they believe they have more fully implemented the recommendations than indicated in our follow up, and that they will provide a detailed response to your Board by October 12, 2007.

County Counsel also indicated they are taking steps to address the other recommendations from our January 29, 2007 report, which were not included in this follow up. We will reevaluate the status of the recommendations in future follow ups.

We thank County Counsel management and staff for their cooperation and assistance during this review.

Please call me if you have any questions, or your staff may contact Terri Kasman at (626) 293-1121.

JTM:MMO:JLS:TK

Attachment

c: William T Fujioka, Chief Executive Officer
Raymond G. Fortner, Jr., County Counsel
Rocky Armfield, County Risk Manager
Sachi A. Hamai, Executive Officer
Public Information Office
Audit Committee

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October 3, 2007

VIA MESSENGER

J. Tyler McCauley
Auditor-Controller
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Re: Follow-Up Review of County Counsel Litigation Cost Management

Dear Mr. McCauley:

This is to provide you with a brief responsive letter which I understand will be appended to your report. Of course, my staff and I are available to provide any further information or to respond to any inquiries that you or the Board of Supervisors may have.

We are gratified that you have recognized that significant progress has been made by our office in the implementation of the recommendations of the January 29, 2007 report, and specifically that we have fully implemented recommendations 13, 28, 29, 35, and 36.

However, in lengthy and numerous meetings with your staff, and the exit conferences on July 19, 2007 and August 15, 2007, we believe that we have provided ample information and documentation to your staff which demonstrates that we have implemented the remaining recommendations more fully than your report concludes.

We will be providing the Board a further response regarding these remaining recommendations by October 12, 2007.

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If you have questions concerning this matter, please contact me, or Chief Deputy County Counsel Leela A. Kapur at (213) 974-1807.

Very truly yours,

RAYMOND G. FORTNER, JR.
County Counsel

RGF:jb

c: William T Fujioka
Chief Executive Officer