



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

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Fifth District

June 5, 2009

To: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

FINAL REPORT ON CIVIL SERVICE COMMISSION MOTION

On April 14, 2009, your Board, on motion of Supervisor Molina, directed the Executive Officer of the Board and this Office in consultation, as appropriate, with the Acting County Counsel and the Executive Director of the Civil Service Commission (Commission), to determine the level of need and the best structure to provide legal advice and representation to the Civil Service Commission and provide recommendations. In addition, your Board directed the Acting County Counsel, the Acting Director of Personnel and the Executive Officer of the Board, to report back by department on the process by which the County prepares cases, selects advocates, including outside counsel, to present cases before the Civil Service Commission.

In addition to the above actions, your Board requested for the report to identify all current advocates who represent the County before the Civil Service Commission, their level of experience and training, and a brief summary of each of the cases they have handled within the last two years including the outcomes of these cases. The report was to also include a per department account of the total annual cost for each of the last two years of defending civil service cases. The costs should specifically identify any fees and costs incurred in hiring outside counsel to defend these cases and any costs associated with lost cases such as back pay, reinstatement, or other compensation; and report back to your Board on the above items by May 14, 2009.

On May 14, 2009, we provided your Board with our response (Attachment A) to the first part of your motion regarding legal advice and representation to the Civil Service Commission including our recommendation that the County maintain the current arrangement, with County Counsel representing both the Commission and the departments appearing before the Commission, but that when a request is made to your Board for authority to seek a writ in the Superior Court to challenge a Commission decision, the County Counsel advisor to the Commission submit a separate statement to the Board presenting the Commission's rationale on the case. With respect to your Board's directive regarding the current advocates and costs associated with retaining outside counsel, we requested additional time to complete our analysis. We completed our response regarding the second part of your Board's motion as detailed below and we also included additional information for your consideration in response to the first part of your Board's motion.

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Report on Departmental Advocates and Use of Outside Counsel

In response to your Board's motion, the Department of Human Resources (DHR) notified all departments, and subsequently, Human Resources Managers of the scope of the directive. Each department was asked to report on the process by which advocates are selected, how advocates prepare cases to present before the Civil Service Commission, and the outcomes on disciplinary Commission cases per department within the last two years. DHR developed and distributed a survey instrument to assist departments in uniformly reporting this information. Additionally, County Counsel initiated the collection and assessment of data relative to the Commission case outcomes related to the Sheriff's Department and data related to costs associated with outside counsel information as identified in the motion.

Executive Summary

Departments have the responsibility and the authority necessary to take corrective actions in connection with employee misconduct or poor performance in accordance with the County Code and Civil Service Rules. In doing so, the County meets its responsibility of maintaining high standards of accountability and seeks to minimize risk and liability.

The County Charter makes it clear that in the Civil Service System for the classified service, County government will, amongst other things, do the following in order to maintain a productive, efficient, stable, and representative work force:

"Retain employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected."

In addition to the above language contained in the County's Charter, your Board has sought to maintain high levels of accountability by expecting departments to:

- Hold employees accountable for their actions;
- Act affirmatively to prevent performance problems and document those problems when they occur; and
- Take immediate and effective disciplinary action that is commensurate with the offense, as opposed to defensive action that is believed to be comfortably sustainable through the appeals process.

Whenever substantial discipline is taken, employees have the right to petition the Commission for an administrative hearing. The Commission is a County Charter mandated independent commission charged with acting as the appellate body for classified employees subject to disciplinary actions that includes discharges, reductions or suspension of more than five days. The Commission will also consider petitions and grant administrative hearings in matters involving alleged violation of discrimination and scored portions of examinations.

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As described in Civil Service Rule 4.12, with respect to disciplinary appeals that proceed to hearing, the department has the burden of proving the allegations contained in the final discipline letter. As with all civil proceeding matters, such as administrative hearings, the burden of proof is by a *preponderance of the evidence*. Essentially, the department meets its burden once it shows that, "its version of a fact is more likely than not the true version." *Beck Development Co. v. Southern Pacific Transportation Co.* 44 Cal.App.4th 1160, 1205 (1996). Under this burden, the department must show by a preponderance of the evidence that the employee engaged in the alleged misconduct and that the misconduct provides an adequate basis for the discipline imposed. *Skelly v. State Personnel Bd.* 15 Cal. 3d 194, 204, fn. 19 (1975).

The 39 departments surveyed were requested to produce data reflecting the total number of Civil Service Commission cases or disciplinary appeals they closed during the period of January 1, 2007 through April 10, 2009. Closed cases are defined in this report as any matter having a Commission *case number* (e.g., 09-1058) that was deemed closed as a result of Commission final decision or disposition. The requested data focused on disciplinary cases, because it is this type of case that is more likely to be pursued in Superior Court by either the employee or department.

During the period of January 1, 2007 through April 10, 2009, based on data collected, departments closed approximately 563 disciplinary related Commission cases. Of those cases, the majority were filed by employees of the following departments (Attachment B):

1. Department of Health Services
2. Sheriff's Department
3. Department of Public Social Services

Departments rely on internal human resources staff to conduct administrative reviews of matters involving potential violation(s) of County or departmental policies or procedures. Upon substantiating such violation(s), departmental human resources staff prepares disciplinary letters needed to initiate and complete the disciplinary process. Once the department finalizes the disciplinary action, employees suspended for more than five days, reduced, or discharged have rights to petition the Commission for an administrative hearing.

When an employee files a petition to the Commission and requests an administrative hearing, departments utilize one of three advocacy services models in the appeal process on behalf of management, they are:

1. Departmental Advocates
2. Department of Human Resources Civil Service Advocacy
3. Outside Counsel via Office of the County Counsel

Based on the data reported, during the period of 2007 through 2009, the Department of Human Resources Civil Service Advocacy (DHR-CSA) Division represented departments in approximately 50 percent of the cases closed by the Commission. This represents significant coordination between departments to integrate a Shared Service Model based on their confidence in the ability of DHR-CSA to successfully handle their appeals filed by their employees before the Commission.

Another aspect of a shared service model is that departments have access to outside counsel via County Counsel. Departments engage the use of outside counsel in cases where it is determined that there is a high degree of complexity, sensitivity, or likelihood of litigation beyond the civil service arena. In making these types of determinations, line departments rely upon their human resources advocacy staff, consult with DHR-CSA, or consult directly with County Counsel's Labor & Employment Division to make an initial assessment. This is followed by consultation with departmental executive staff, which in turn approves referring the matter to outside counsel. Without exception, each Commission case that reflects a need to retain outside counsel must ultimately be referred to and obtain the approval of County Counsel. The Acting Chief of the County Counsel's Labor & Employment Division is responsible for assignment of these cases to outside counsel based on expertise and availability.

In matters that DHR-CSA manages for a respective line department based on a shared service model, DHR-CSA will also work directly with the Acting Chief, Labor & Employment Division, County Counsel, to ensure referral to outside counsel in sensitive and complex cases before the Commission.

In conclusion, DHR has determined that the Shared Services Model is an optimal model because it improves efficacy in connection with the specialized function of advocacy services before the Commission. A centralized model of service delivery provides a higher degree of protocols, monitoring, and oversight associated with the various aspects of the appeal process and ultimately leads to improvements in cost-savings associated with successful outcomes.

Scope and Methodology

Assessment of Survey Results

As previously noted, a total of 39 departments participated in the survey. Additionally, the Sheriff's Department reported its data directly to County Counsel which is incorporated into this report and County Counsel reported on outside counsel costs.

The survey specifically requested information concerning the following:

- Criteria for assigning an advocate to handle a Commission case;
- Process and method by which advocate prepares and develops case for hearing;
- Data on departmental advocates;¹
- Number of closed Commission disciplinary cases; and ²
- Costs associated with back-pay on actions not fully sustained.

In connection with the survey information provided by the 39 departments that responded, there were over 563 closed disciplinary related Commission cases during January 1, 2007 through

¹ Includes experience, training and outcomes per department.

² Closed cases are cases in which the Civil Service Commission rendered a final decision on the matter between January 1, 2007 and April 10, 2009.

April 10, 2009. Of the 563 closed disciplinary cases, 217 (38%) of those cases were discharge actions that were appealed to the Commission. For purposes of context, during this same period there were over 980 disciplinary actions taken against permanent County employees by departments that were able to be appealed to the Commission; the data revealed that over 260 involved discharge actions.

This data strongly reflects that departments are actively engaging the discipline process, and when necessary, have exercised their authority to separate employees from service based on poor performance or unacceptable behavior. While it is recognized that public sector employees enjoy considerable protections associated with governmental employment, the data provided supports that departments have and will continue to exercise their management's rights to hold employees accountable.

Scope of Analysis

The analysis is based upon receipt of information provided by departments and analyzing this input against Commission records in order to report on the above referenced Survey Instrument elements.

The scope of work includes an assessment and analysis of preliminary information submitted by departments that includes 563 closed Commission disciplinary cases during the period of January 1, 2007 through April 10, 2009.

Advocacy Experience, Training, and Selection

Experience

The data reflects that the majority of staff both in line-departments and DHR-CSA performing the specialized function of advocate, posses legal educational backgrounds. While having a legal background is not a requirement to serve as an advocate, DHR has viewed this type of educational training as an important factor in understanding the process and elements needed to present a case in an administrative hearing. As part of the Classification Specifications for the position of Departmental Civil Service Representative, DHR has added legal background as an optional Minimum Requirement to facilitate those individuals possessing such a background to become candidates. DHR believes that next to actual advocacy experience, possessing a legal background increases the likelihood of success in the performance of the advocate function.

The following reflects a brief summation of the assessment of one aspect of relevant educational information provided by line departments to date:

Assessment – Percentage of Current Advocate Staff with Legal Education:

- | | |
|-------------------------------------|------|
| • Departments | 71% |
| • DHR Civil Service Advocacy | 91% |
| • Outside Counsel | 100% |

Additionally, we requested information that would provide an understanding of the experience that has been garnered by staff performing in the capacity of advocates. Our review of the data is below:

Assessment – Percentage of Current Advocate Staff and Years of County Advocacy Experience:

	<u><2 yrs</u>	<u>2-5 yrs</u>	<u>>5 yrs</u>
• Departments	32%	43%	25%
• DHR Civil Service Advocacy	46%	27%	27%

We also requested information regarding the percentage of time departmental staff dedicates to performing advocacy services in connection with matters before the Commission. Our review reflects the following:

Assessment – Average Percentage of Time in Performing Advocacy Services:

• Departments	~ 20% - 25%
• DHR Civil Service Advocacy	~ 90%

Information regarding the average number of cases handled by advocates in the performance of advocacy services in matters before the Commission reflects the following:

Assessment – Average Advocate Caseload Performing Advocacy Services:

• Departments	~ 0 – 3
• Sheriff's Department	~ 10 – 15
• DHR Civil Service Advocacy	~ 20

Additionally, our assessment reflects that departmental staff performing the specialized advocacy function in line departments, are at the level of Departmental Civil Service Representative (Salary Range: \$5,399.09 - \$7,080.64) and also perform related human resources tasks and duties including, but not limited to, the following:

- Administrative investigations
- Handling grievances
- Preparation of discipline letters
- Consultations with management on performance management issues
- Training and presentations
- Other special assignments

Whereas DHR-CSA staff assigned to the specialized advocacy functions mainly hold the position of Human Resources Analyst III (Salary Range: \$5,699.55 - \$7,475.64) or Human Resources Analyst IV (Salary Range: \$6,706.91 - \$8,796.45).

The Department of Human Resources has examined the above factors in consideration of outcomes achieved by departments to find that experience and workplace stability support has a direct correlation with garnering successful outcomes. Additionally, based on experience and observation, DHR believes that the frequency in which an advocate appears before the Commission, or its assigned Hearing Officers, serves as a platform to gain valuable insights into the

process and nuances involved in the advocate function. Such experience should lead to increased efficacy relative to established specialty skills and knowledge. Any advocate with more than two years of experience should be able to effectively manage themselves in a hearing setting before a Hearing Officer and in oral presentations before the Commission.

Training

Data provided by departments reflects a high degree of consistency with respect to attending the exclusive and comprehensive training opportunity developed by a much respected, former Hearing Officer of the Commission and current arbitrator before the Employee Relations Commission. This training program, known as the *Advocacy Skills Workshop* is now provided by two experienced Hearing Officers and is scheduled annually. The workshop is a 12-day program that invites both management and labor advocates to attend and incorporate real advocacy scenario training and culminates in a mock hearing activity. DHR's *Los Angeles County Learning Academy* has traditionally sponsored approximately 8 – 12 slots for this focused and specialized training program. We requested that departments report on the number of current advocates that have attended DHR's *Los Angeles County Learning Academy* sponsored training program. The preliminary data indicates the following:

Assessment – Percentage of Current Advocate Staff that have attended the Advocacy Skills Workshop:

• Departments	89%
• DHR Civil Service Advocacy	100%

Additional training opportunities are provided by the Advocate Council, which is a countywide workgroup that is led by DHR-CSA. Advocate Council provides specific and general trainings and presentations on advocacy skills development; human resources policies, procedures and guidelines; and, addresses trends at Commission using guest speakers or subject matter experts. In the past two years, the following internal and external resources have been utilized to provide advocates with learning opportunities, skill building, and development:

- Chief Executive Office
- Civil Service Commission
- Department of Human Resources
- District Attorney
- Office of Affirmative Action Compliance
- Office of the County Counsel
- Outside Counsel

Additionally, the DHR *Los Angeles County Learning Academy* provides a variety of skills based opportunities that can serve to enhance the skills of any human resources professional.

Selection

In response to your Board's motion regarding information on the process by which departments select advocates, we found that departments report that they use a universally accepted approach

to the selection of an advocate for a given case. The selection process includes, but is not limited to, the following considerations in assigning a case to an advocate:

- Level of complexity of cases (i.e., multiple issues, numerous witnesses, specialized knowledge, etc.);
- Level of sensitivity of cases (i.e., media coverage, management or executive level employee, nature of the issue, etc.);
- Type of case appealed (i.e., discipline, medical release, examinations, etc.);
- Existing litigation or the likelihood of litigation;
- Resources needed to present case due to complexity or likelihood of a protracted administrative hearing; and
- Current workload of advocate relative to other assignments.

The selection of an advocate to a given Commission case will include an analysis of their respective experience, skills and knowledge. These general factors are also used by DHR-CSA to assign work. Moreover, DHR-CSA uses a Tier System ("I" = Lowest and "III" = Highest), so that more complex cases are assigned to more seasoned advocates or a determination is made to assign to outside counsel, as described below. The above referenced selection process is universally applied by line departments in determining to use DHR-CSA or seek services of outside counsel.

In cases where it is determined that outside counsel is appropriate, line departments rely upon their human resources advocacy staff or consult with DHR-CSA, or consult directly with County Counsel's Labor & Employment Division to make an initial assessment. This is followed by consultation with executive staff that in turn approves referring the matter to County Counsel for appropriate assignment of outside counsel. Without exception, each case that reflects a need to retain outside counsel must ultimately be referred to and obtain the approval of County Counsel. The Acting Chief of the County Counsel's Labor & Employment Division is responsible for assignment of these cases to outside counsel based on expertise and availability.

DHR-CSA similarly works with the Acting Chief, Labor & Employment Division, County Counsel to ensure that a referral is assigned to outside counsel for those departments in which DHR-CSA manages the Commission cases.

Advocacy Services Models

The following represents a brief description of the three models currently utilized in the handling of administrative hearings before the Commission. For those departments that do not have trained advocates on staff or the experienced staffing to assign sensitive administrative hearings, DHR-CSA serves as the advocate of record. It should be noted that DHR-CSA currently provides advocacy services to approximately 65% – 70% of County departments; including a *sampling* of the following departments (Attachment C and Attachment D):

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- Auditor-Controller
- Chief Executive Office
- Children & Family Services
- Consumer Affairs
- Health Services
- Mental Health
- Office of Public Safety
- Public Health
- Public Social Services
- Public Library
- Regional Planning
- Treasurer & Tax Collector

A distinct advantage of the DHR-CSA is that the advocates perform specialized advocate functions related to Commission cases at or near 85% - 90% of their working hours.

A second model includes those departments that utilize DHR-CSA services or outside counsel on a case-by-case basis in addition to using their own departmental advocates. This is particularly the case if the department has staff trained to perform the advocate function, amongst their other human resources services duties and responsibilities; those departments are:

- Animal Care & Control
- Assessor
- Child Support Services
- County Counsel
- District Attorney
- Fire
- Parks & Recreation
- Registrar-Recorder/County Clerk

The remaining departments utilize a third model and employ their own advocates due to having trained staff to perform the advocate function, amongst their other human resources services duties and responsibilities, or refer cases to outside counsel:

- Alternate Public Defender
- Internal Services
- Probation
- Public Defender
- Public Works
- Sheriff

With respect to the Sheriff's Department, County Counsel has assigned three full-time Deputy Counsel to advise and assist the department in labor and employment matters, including handling and/or supervising Commission appeals. In addition, the Sheriff has assigned Sergeants to act as advocates before the Commission.

We find that in smaller departments with limited Commission cases, they typically assign advocates who handled the discipline process to then be utilized as advocates. Whereas in larger departments, there is a separation of duties in that human resources staff work up the discipline case and the advocate service (e.g., DHR-CSA) becomes responsible for handling the appeal. Each model has its strengths and weaknesses; however, given the level of experience and specialization needed to prepare and present a case before a hearing officer, there are substantive benefits in having a group of well trained administrative hearing specialists.

Preparation of the Civil Service Commission Case

We are currently analyzing the data provided by departments to group responses in the manner requested by the Board's motion. However, we can fairly report that as a general rule, an advocate should be engaged in a process to fully review the disciplinary letter and background materials used to support the imposition of discipline. It is the four-corners of the disciplinary letter that is the actual subject of the administrative hearing before a Commission assigned Hearing Officer. However, should there be issues that include claims of discrimination in any given case, it has been standard practice to consult with County Counsel's Labor & Employment Division or DHR-CSA. This ensures that the advocate is either properly prepared to handle the case or determine if the case is best assigned to outside counsel.

An advocate, at a minimum, is to engage in the following activities:

- Consult with their supervisor and peers on any and all aspects of the initial assessment of the case;
- Review carefully the facts contained in the discipline letter and gather all corresponding documentary or witness evidence to support each and every allegation;
 - If witnesses are involved, whether County employees or members of the public, ensure that contact information is secured;
- Review closely the charges or basis for the discipline as set by the department and obtained all relevant departmental or County policies;
- Review closely all "Skelly" materials and notes related to the "Skelly" meeting;
- Review case for its strengths and weaknesses in connection with the theory of the case and determine if there are any claims of discrimination, and if so, consult with County Counsel and DHR-CSA;
- Interview and re-interview all actual or potential witnesses;
- Prepare a case workbook;

- Conduct legal research on case law that supports the department's case-in-chief and consult with DHR-CSA or County Counsel, especially in cases involving claims of discrimination;
- Contact DHR-CSA and consult with respect to the Commission's assigned Hearing Officer;
- As case nears, prepare the following:
 - Exhibit book
 - Subpoenas
 - Parking arrangements
 - Pre-Hearing Conference
 - Make copies of all relevant case law
 - Opening Statement
 - Questions for Witnesses on Direct-Examination
 - Questions for planned and anticipated Cross-Examination
 - Closing Statement; and
- Consult with their supervisor and peers on any and all aspects of the case in preparation for case presentation.

The above, while not all inclusive, is a universal and general guideline utilized by advocates following the assignment of a Commission case and in preparation leading up the actual administrative hearing. These guidelines are also applicable to outside counsel, whose performance is monitored by a supervising attorney in the Labor & Employment Division, County Counsel.

Each case has its own unique set of circumstances and challenges and, as such, a variety of different areas of focused activity may be necessitated given the strengths or weaknesses of the case. It is worth noting that the above referenced elements are also included in the advocacy specific training program entitled *Advocacy Skills Workshop*.

Performance Measurements

In assessing favorable outcomes, we applied the performance measurement standard utilized by DHR-CSA to all departments in reporting its outcomes. In this approach, outcomes are assessed based on whether the department was sustained in whole, in part, or not sustained at all. In cases of discharge or reduction, only outcomes sustaining discharge or reduction via a Commission hearing or by way of resignation, were considered as favorable. If an employee was returned to employment following a discharge action, for any reason, the outcome is considered unfavorable.

We also have provided data that reflects specifically on those discharge cases that actually went through the Commission hearing process and derive statistics from the information obtained from line departments. As with all matters that involve Commission cases, variables include, but are not limited to, the complexity and sensitivity of cases as a function of department size; reasons for

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discipline; employee classifications; number of witnesses and availability; advocate experience; experience of opposing counsel; and, hearing officers (Attachment E).

In situations where a department is not sustained by the Commission, the DHR-CSA has an established practice of notifying both executive staff and human resources staff of the outcome of the case via copy of the hearing officer's report. Depending on the size of the department, briefings on outcome strengths and weaknesses can take place with the respective human resources office, management, and/or Department Head. The purpose of DHR-CSA reporting back to a department is to discuss both the strengths and weaknesses of the case and outcome. In reporting on weakness, we assist the department to establish action steps to rule out the possibility of repeating errors noted in the case by the hearing officer. We also believe that in reporting strengths, we affirm areas of best practices and it serves to reinforce the value of using techniques that prove helpful in assisting the department to achieve a sustainable action.

Costs Related to Defending Civil Service Cases

DHR has worked with line departments to identify costs incurred in Commission cases in which back pay is required due to reinstatement, in order to fully report on this element of the Board's motion (Attachment F).

Additionally, County Counsel has provided data specifically related to costs incurred in hiring outside counsel to defend departments in disciplinary appeals before the Commission (Attachment G). These costs include attorneys' fees and costs related to evaluation, preparation, and presentation of a case before the Commission and its hearing officer, and/or resolving a disciplinary matter prior to final action by the Commission. The actual costs associated with defense of a case vary depending on the nature of the discipline, the complexity of the case and the number of days of hearing that may be required.

All invoices related to costs incurred by outside counsel are reviewed and approved by a supervising attorney in the Labor & Employment Division, County Counsel, prior to payment.

Based on the data provided, outside counsel handles approximately 57 cases per year with an estimated annual cost of \$1.1 million. If this work was brought in-house, based on average number of cases handled by the advocates and given the complexity of these cases, we estimate that it would take six Senior Deputy County Counsel positions to handle this workload. Additionally, the Supervising Attorney in the Labor & Employment Division could be reassigned to manage these attorneys. The estimated annual cost for six additional positions is \$1.2 million. Therefore, it is cost efficient to continue having outside counsel handling these cases.

Legal Advice to the Civil Service Commission

As previously mentioned, we have additional information, as detailed below, that supplements our original response to the first part of your Board's motion regarding legal advice and representation to the Commission. Please note that some of the information provided may overlap with our original response; however, this information is necessary to provide your Board with a complete response that addresses your concerns.

County Counsel Representation

A Deputy County Counsel (Counsel) is assigned to work with the Commission full-time and is available to meet with them and respond to inquiries at any time. Counsel attends the Commission's regularly scheduled Wednesday meetings advising the Commission on the applicable Civil Service rules and other County regulations, as well as applicable employment laws, and possible options for the Commission to reach its desired result. In providing advice, the assigned Counsel must review all matters on the Commission's weekly agenda (generally 20-25 matters). Counsel also meets with the Commission Executive Director on a regular basis. On average, the above duties represent approximately the equivalent of two days (40%) of the assigned Counsel's work week.

Jurisdictional Survey

The Commission's Executive Director surveyed 11 civil service commissions in jurisdictions throughout the state including, but not limited to, the City of Los Angeles, San Diego County, Alameda County, the City of Long Beach, the City of San Francisco and the State Personnel Board. Ten of these commissions are advised by either county counsel or the city attorney's office, as appropriate, which is similar the practice utilized by the County. The City of Torrance retains an outside firm hired through the city attorney's office. In addition, due to the overall size and scope of the State's Personnel Board, it has full-time dedicated counsel to provide legal advice on various State personnel issues. Similar to the County, counsel for the 11 local jurisdictions do not provide legal advice on a full-time basis, but make themselves available to their respective commissions as needed to provide legal advice and direction. Their process for review and advice is very similar to how the County utilizes counsel.

Commissioner Input

The Commission's Executive Director met privately with the Commissioners on two separate occasions to ascertain their views on the "the level of need and the best structure to provide legal advice and representation to the Commission." The Commissioners have expressed satisfaction with both the current level of service and advice that is provided to the Commission from County Counsel. The Executive Director also spoke to all but one of the Commissioners individually to further explore options and recommendations. They have expressed a concern that your Board may not always be provided all of the relevant information regarding the basis for Commission's decisions, particularly in discharge cases, when a department seeks Board authority to seek a writ from the Superior Court. Some of the Commissioners stated that this may be attributed to the fact that no Commission advisor provides input during your Board's closed session.

Areas for Improvement

We believe that the following areas for improvement will assist the County in strengthening its advocacy function:

- Ensure that departments are accessing assistance in a timely manner from County Counsel or DHR-CSA in connection with their review of complex and sensitive matters.

- Ensure on-going reporting by departments on Commission outcomes to DHR-CSA.
- Ensure a structured approach to lessons learned is held with departments when there are negative outcomes, which is to include with departmental Human Resources, DHR-CSA, and County Counsel.

Recommendations

Given the review undertaken in response to your Board's motion, we recommend measures intended to increase accountability in the area of advocacy services and minimize risk and liability to the County. Specifically, we recommend the following actions:

1. Our Office, in collaboration with County Counsel and DHR, will evaluate centralizing the advocate function under the direction of DHR-CSA.
2. DHR-CSA will prioritize the review of those departments, in which data supports the need for expedited assistance by DHR-CSA and County Counsel. In concert with this action, we also recommend that:
 - County Counsel, DHR-CSA, and the applicable department perform a joint review on any proposed Letters of Intent to Discharge; and
 - County Counsel, DHR-CSA, and applicable department perform a joint review on all new petitions filed with the Commission to determine the selection of advocate in all such cases.
3. DHR-CSA will require that all departments maintain a database regarding active Commission cases based on common reporting elements.
4. Our Office, in collaboration with County Counsel and DHR, will require that all departments report quarterly to the DHR and County Counsel on the status of all open, active, and closed Commission cases.
5. Our Office will preserve funding for DHR for continued use of the *Advocacy Skills Workshop* training and pursue additional specialized advocacy training programs with a goal of improved outcomes.
6. DHR-CSA will require the attendance of departmental advocates to monthly Advocate Council meetings.
7. Our Office, in collaboration with DHR, will ensure that DHR's *Los Angeles County Learning Academy* continue to provide countywide training on the following subjects:
 - *Effective Discipline Workshop*
 - *Supervision and Performance Management Workshop*
 - *Legal Environment, Employee Relations, and Discipline Program*

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8. Our Office will ensure that DHR-CSA continue to attend Civil Service Commission Closed Sessions as per County Code and pursuant to *Copley Press* concerning Probation Department cases.
9. DHR-CSA will notify all departmental advocates that they must ensure that *salary waivers* are sought in Commission hearings that are continued by employees or their representatives.
10. Our Office, in collaboration with Auditor-Controller, County Counsel, and DHR will establish a countywide policy on ensure that departments notify the Auditor-Controller on all Commission cases involving actions that are not sustained and require back pay.

Should you have questions regarding this memorandum, please contact me, or your staff may contact Epifanio Peinado, Administrator, DHR-CSA, at (213) 893-0872 or epeinado@hr.lacounty.gov.

WTF:ES:
GS:VA:cg

Attachments

c: All Department Heads
Civil Service Commission

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County of Los Angeles CHIEF EXECUTIVE OFFICE

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ATTACHMENT A

WILLIAM T FUJIOKA
Chief Executive Officer

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From: William T Fujioka
Chief Executive Officer

Sachi A. Hamai
Executive Officer, Board of Supervisors

STATUS REPORT ON CIVIL SERVICE COMMISSION MOTION

On April 14, 2009, on the motion of Supervisor Molina, your Board directed the Executive Officer of the Board and this Office in consultation, as appropriate, with the Acting County Counsel and the Executive Director of the Civil Service Commission, to determine the level of need and the best structure to provide legal advice and representation to the Civil Service Commission and provide recommendations. In addition, your Board directed the Acting County Counsel, the Acting Director of the Department of Human Resources (DHR), and the Executive Officer of the Board to report back by department, on the process by which the County prepares cases, selects advocates, including outside counsel, to present cases before the Civil Service Commission.

In concert with the above actions, your Board requested for the report to identify all current advocates who represent the County before the Civil Service Commission, their level of experience and training, and a brief summary of each of the cases they have handled within the last two years including the outcomes of these cases. The report should also include a per department account of the total annual cost for each of the last two years of defending civil service cases. The costs should specifically identify any fees and costs incurred in hiring outside counsel to defend these cases and any costs associated with lost cases such as back pay, reinstatement, or other compensation; and report back to your Board on the above items by May 14, 2009. Our responses to your Board's directives are outlined below.

"To Enrich Lives Through Effective And Caring Service"

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Legal Advice and Representation to the Civil Service Commission

Background on Civil Service Commission Processes and Procedures

The Los Angeles County Civil Service Commission (Commission) is a County Charter mandated independent commission, which serves as the administrative appellate body for classified employees who have received major discipline, such as discharges, reductions, and suspensions in excess of five days, as well as discrimination complaints filed by County employees. The Commission also hears appeals of scored portions of examinations. Additionally, the Commission serves as the administrative appeals body for a number of cities that directly contract with the County. Pursuant to Civil Service Rule 4.03, the Commission must grant petitions for hearings in cases of discharge, reduction, or suspension in excess of five days. In 2008, the Commission received 536 petitions for hearings. Of these, 308 were disciplinary appeals, which amount to approximately 58% of the cases. For the period January 1, 2007 through April 10, 2009, the Commission received 1,094 appeals.

The Commission is comprised of five Commissioners appointed by the Board of Supervisors. The current Commissioners are:

Lynn Adkins (President)	Fourth District
Evelyn Martinez	First District
Vange Felton	Second District
Carol Fox	Third District
Z. Greg Kahwajian	Fifth District

The Commission's day-to-day operations are overseen by the Executive Director who manages a staff of seven full-time employees and two student workers.

When a matter is granted a hearing, the case is assigned to one of the Commission's 66 hearing officers. The hearing officers preside over evidentiary hearings. Parties to hearings have the opportunity to subpoena, present, and cross-examine witnesses. Subsequent to the close of hearings, the hearing officers submit reports and recommendations for the Commission's consideration. Hearing officers' reports must include findings of fact and conclusions of law. If the Commission adopts a hearing officer's recommendation, any party aggrieved by the proposed decision may file objections. If, based upon the objections, the Commission adopts a new proposed decision, any party who has not previously filed objections may do so. After all parties have been provided an opportunity to submit objections, the Commission renders its final decision.

Legal Advice to the Civil Service Commission

County Counsel provides legal advice to the Commission. On average, the assigned Deputy County Counsel allocates approximately two workdays a week to providing guidance to the Commission, including attending the Commission's regularly scheduled Wednesday meetings. In providing advice, the assigned Deputy County Counsel must review approximately 20 to 25

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matters on the Commission's agenda. The Commission is advised on the applicable Civil Service rules and other County regulations, as well as applicable employment laws, and possible options for the Commission to reach its desired result.

A question has been raised about the role that County Counsel has in the matters that come before the Commission, in that the Commission is advised by an attorney from County Counsel, and other attorneys from County Counsel also represent departments before the Commission.

There is a long line of legal authority for the proposition that attorneys in public law offices can properly serve as advisors to administrative agencies while other attorneys from the same public law office serve as advocates before the same agencies, as long as there is proper separation between the lawyers performing the different functions, the so-called "ethical wall". Ford v. Civil Service Commission (1958) 161 CA2d 692, (L.A. County Civil Service Commission case); 12319 Corp. v. Business License Com. (1982) 137 CA3rd 64 (L.A. County case where a County Counsel attorney advised the Commission while other attorneys advocated before the Commission, and where the License Appeals Board had as a member another attorney from the County Counsel); Howitt v. Superior Court (1992) 3 CA4th 1575 (Due process concerns satisfied if there is appropriate separation); City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 C4th 839 at 855-856 (Salaried public lawyers do not have the financial interests that private lawyers have in the outcome of cases, and disqualification not needed as long as there is proper screening of the lawyers performing the various functions).

The process of having County Counsel represent both the Commission and departments appearing before the Commission, has been in place for decades. In providing this dual representation, County Counsel has always been careful to maintain the "ethical wall" required by courts. In the rare instances when County Counsel has had matters before the Commission in the past, legal advice, if needed, has been obtained from outside counsel. Occasionally, when the facts require it, the Commission's regular advisors' recuse themselves from an individual Commission case.

The Commissioners have expressed satisfaction with this arrangement and have indicated that they are very satisfied with the advice and service they receive from County Counsel. However, they have expressed a concern that your Board is not always provided all of the relevant information regarding the Commission's decisions, particularly discharge cases, when a department seeks Board authority to seek a writ from the Superior Court.

Recommendation

Therefore, it is recommended that the County continue the current arrangement, with County Counsel representing both the Commission and the departments appearing before the Commission, but that when a request is made to your Board for authority to seek a writ in the Superior Court to challenge a Commission decision, the County Counsel advisor to the Commission should submit a separate statement to the Board presenting the Commission's rationale on the case.

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Report on Departmental Advocates

Report on Departmental Advocates/ Use of Outside Counsel

In response to your Board's directive regarding the report that will identify all current advocates who represent the County before the Civil Service Commission, their level of experience and training, and a brief summary of each of the cases they have handled within the last two years including the outcomes of these cases, and costs associated with retaining outside counsel to defend these cases, this Office formed a workgroup of the aforementioned departments and we are compiling the requested information. Specifically, DHR developed and distributed a survey instrument to departments in order to assess the process by which advocates are selected and how they prepare cases to present before the Civil Service Commission. The survey instrument will also include information on the experience and training for advocates. Additionally, information is being sought concerning outcomes of cases handled over the past two years per your mandate. DHR, in conjunction with County Counsel, is in the process of assessing the survey responses and is contacting departmental representatives to discuss their input.

In order to provide a comprehensive response to your Board's directive regarding the current advocates and costs associated with retaining outside counsel, a 60-day extension is necessary to gather this information and to complete a full analysis. Therefore, we are targeting **July 14, 2009**, to provide your Board with our findings and recommendations on this topic.

Should you have any questions regarding this memorandum, please contact me, or your staff may contact Vincent Amerson at (213) 974-1168 or vamerson@ceo.lacounty.gov.

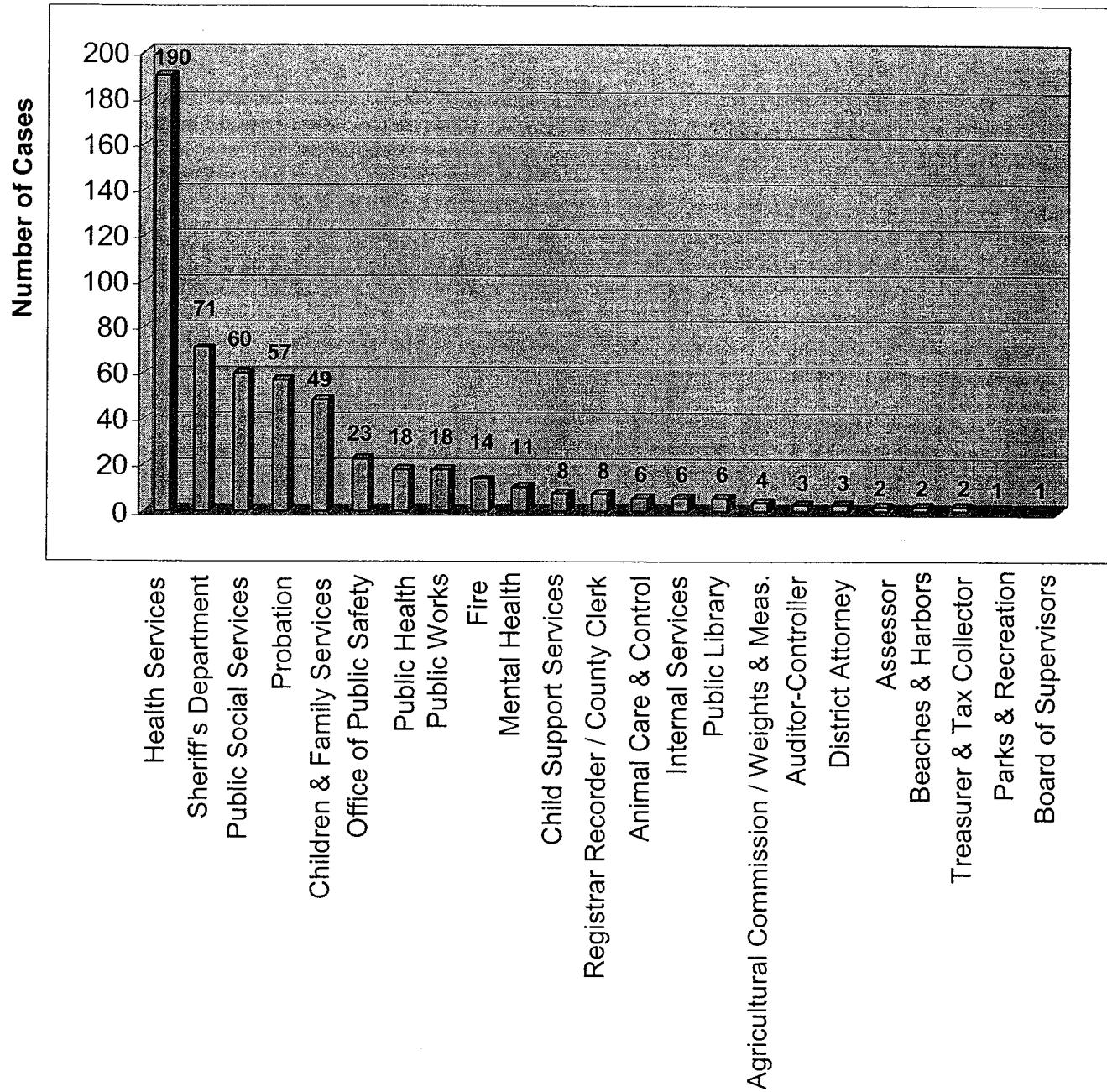
WTF:ES
GS:VLA:cg

c: All Department Heads
Civil Service Commission

**Civil Service Commission
Closed Cases by Department**

Total: 563

January 1, 2007 – April 10, 2009



ADVOCACY SERVICE MODELS FOR CIVIL SERVICE COMMISSION APPEALS

Attachment C

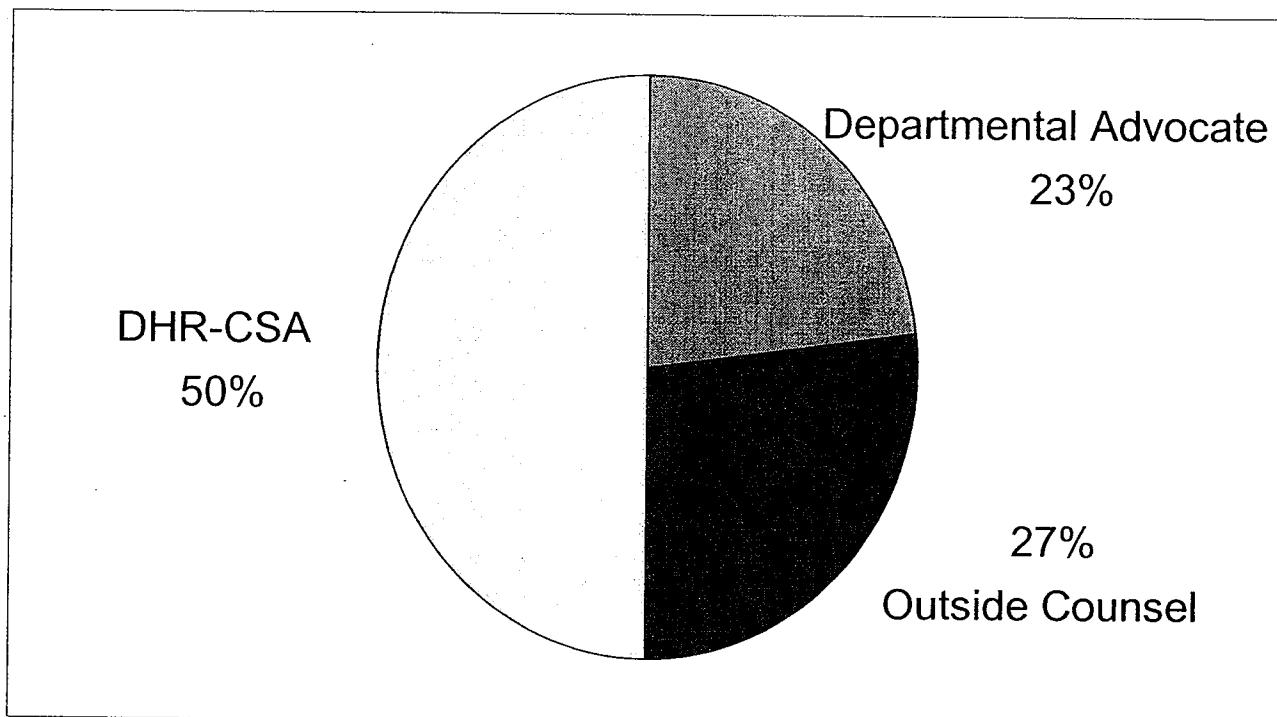
ADVOCATE SERVICES PROVIDED BY	ADVOCATE SERVICES PROVIDED BY	ADVOCATE SERVICES PROVIDED BY
• <i>DHR Civil Service Advocacy</i> ¹	• <i>Departmental Advocates</i> • <i>DHR Civil Service Advocacy</i> • <i>Outside Counsel</i>	• <i>Departmental Advocates</i> • <i>Outside Counsel</i>
Affirmative Action Compliance*	Animal Care and Control*	Alternate Public Defender
Agricultural Comm. / Weights & Measures*	Assessor*	Internal Services
Auditor-Controller*	Child Support Services*	Probation
Beaches and Harbors*	County Counsel	Public Defender
Board of Supervisors*	District Attorney*	Public Works
Chief Executive Office*	Fire*	Sheriff
Chief Information Office	Parks and Recreation*	
Children and Family Services*	Registrar Recorder / County Clerk*	
Community and Senior Services*		
Consumer Affairs		
Coroner		
Health Services*		
Human Relations Commission		
Human Resources*		
Mental Health*		
Military and Veterans Affairs*		
Museum of Art		
Museum of Natural History		
Office of Public Safety*		
Ombudsman		
Public Health*		
Public Library*		
Public Social Services*		
Regional Planning		
Treasurer and Tax Collector*		
Total: 25	Total: 8	Total: 6

¹ DHR Civil Service Advocacy works with County Counsel to refer cases to Outside Counsel as necessary.

* Departments that utilized DHR Civil Service Advocacy services during period of January 01, 2007 and April 10, 2009.

**Advocacy Selection:
Closed Civil Service Commission
Disciplinary Cases**

January 1, 2007 – April 10, 2009



Civil Service Commission Disciplinary Case Outcomes by Department

January 1, 2007 - April 10, 2009

DEPARTMENT	No. of Advocates	Avg. Yrs. Co. Exp.	Advocate	PERFORMANCE MEASUREMENTS						
				DISCIPLINARY ACTIONS TOTALS			DISCHARGE HEARINGS & OUTCOMES**			
				No. of Cases	Suspension	Reduction	Discharge	Sustained	Modified	Not Sustained
1 Agricultural Comm. / Weights & Meas.	DHR*	DHR*	DHR-CSA	4	2		2	1		
2 Animal Care and Control	1 Dept'l Advocate DHR	Less than 2 yrs. DHR	Dept'l DHR-CSA* Outside	3 2 1	2 1 1		1 1			
3 Assessor	DHR	DHR	DHR-CSA Outside	1 1			1 1			
4 Auditor-Controller	DHR	DHR	DHR-CSA	3	2		1	1		
5 Beaches & Harbors	DHR	DHR	DHR-CSA	2			2	2		
6 Board of Supervisors, Executive Office	DHR	DHR	DHR-CSA	1	1					
7 Child Support Services	1 Dept'l Advocate DHR	3 yrs. DHR	Dept'l DHR-CSA*	3 5	3 2		3	2		
8 Children and Family Services	4 Dept'l Advocates	Less than 1 yr.	Dept'l Outside	26 23	14 12		12 11	8 6	1 1	
9 District Attorney	1 Dept'l Advocate	10 yrs.	Dept'l Outside	2 1		1	2	1		
10 Fire	4 Dept'l Advocates DHR	2 yrs. DHR	Dept'l DHR-CSA* Outside	6 3 5	4 2 4		2 1 1		1 1	
11 Health Services	DHR	DHR	DHR-CSA* Outside	131 59	83 36	3 2	45 21	19 5	1 1	3 3
12 Internal Services	3 Dept'l Advocates	2 yrs.	Dept'l Outside	3 3	2 1		1 1	1 1		
13 Mental Health	DHR	DHR	DHR-CSA* Outside	10 1	7		3 1	2 0		
14 Office of Public Safety	DHR	DHR	DHR-CSA* Outside	22 1	17		5 1	1 1	2	
15 Parks and Recreation	1 Dept'l Advocate DHR	Less than 2 yrs. DHR	Dept'l DHR-CSA	0 1	0		1			1
16 Probation	4 Dept'l Advocates	4 yrs.	Dept'l Outside	50 7	28 2	2	20 5	4 1	5 1	2 1
17 Public Health	DHR	DHR	DHR-CSA* Outside	15 3	8 3	1	6 0	3 0		
18 Public Library	DHR	DHR	DHR-CSA*	6	2		4	1		
19 Public Social Services	DHR	DHR	DHR-CSA*	60	45		15	9	1	
20 Public Works	3 Dept'l Advocates	Less than 2 yrs.	Dept'l Outside	10 8	2 1	2 1	6 6	4 4	1	1
21 Registrar-Recorder / County Clerk	DHR	DHR	DHR-CSA	1	1					
22 Sheriff's Department	6 Dept'l Advocates	6 yrs.	Dept'l Outside	35 36	24 13	2	9 22	3 7	4	1
23 Treasurer and Tax Collector	DHR	DHR	DHR-CSA	2	1		1	1		
Overall Performance		DEPT'	138	79	6	53	21	8	6	
Overall Performance		OUTSIDE	156	75	8	70	23	3	3	
Overall Performance		DHR-CSA	269	174	4	91	44	5	3	
TOTALS:				563	328	18	217	88	16	12

* DHR Civil Service Advocacy has a total of 13 advocates with average experience of 4.5 years.

** Discharge Hearings & Outcomes reflects decisions on matters that went to hearing, does not include actions withdrawn by employee or rescinded by department or settled by the parties.

**Back Pay and Outside Counsel Costs for Civil Service Commission Discharge Cases
by Department
January 2007 - April 2009**

DEPARTMENT	TOTAL NUMBER OF CLOSED DISCIPLINE CASES	TOTAL NUMBER OF CLOSED DISCHARGE CASES	DISCHARGE CASES OVERTURNED BY CSC OR DEPT. REVERSED	COSTS DUE TO BACK PAY *
Agricultural Comm. / Weights & Meas.	4	2	0	N/A
Animal Care and Control	6	2	0	N/A
Assessor	2	2	0	N/A
Auditor-Controller	3	1	0	N/A
Beaches and Harbors	2	2	0	N/A
Board of Supervisors, Executive Office	1	0	0	N/A
Child Support Services	8	3	1	\$ 34,583.02
Children & Family Services	49	23	4	\$ 193,055.90
District Attorney	3	2	0	N/A
Fire	14	4	2	\$ 193,517.66
Health Services	190	66	12	\$ 779,143.73
Internal Services	6	2	0	N/A
Mental Health	11	4	0	N/A
Office of Public Safety	23	6	3	\$ 391,560.21
Parks and Recreation	1	1	1	\$ 40,380.68
Probation	57	25	11	\$ 595,830.42
Public Health	18	6	0	N/A
Public Library	6	4	0	N/A
Public Social Services	60	15	1	\$ 54,754.77
Public Works	18	12	3	\$ 165,421.52
Registrar-Recorder / County Clerk	8	3	0	N/A
Sheriff	71	31	10	\$ 699,105.19
Treasurer and Tax Collector	2	1	0	N/A
TOTALS	563	217	48	\$ 3,147,353.10
* Back pay is approximated gross pay, does not include deductions for Fed or State taxes, deferred retirement, outside earnings, etc.				
** Fees and costs reflect invoices paid on or before April 10, 2009.				

Outside Counsel Fees / Costs
Civil Service Commission Cases
by Department
January 2007 - April 2009

DEPARTMENT	TOTAL CASES with OUTSIDE COUNSEL	FEES & COSTS*
Agricultural Comm. / Weights & Meas.	0	\$0
Animal Care and Control	1	\$0
Assessor	0	\$0
Auditor-Controller	0	\$0
Beaches and Harbors	0	\$0
Board of Supervisors, Executive Office	1	\$14,907
Child Support Services	0	\$0
Children and Family Services	11	\$232,783
County Counsel	3	\$33,599
District Attorney	0	\$0
Fire	2	\$38,230
Health Services	61	\$763,225
Internal Services	0	\$0
Mental Health	1	\$15,527
Office of Public Safety	5	\$59,218
Parks and Recreation	0	\$0
Probation	2	\$49,129
Public Health	2	\$14,613
Public Library	0	\$0
Public Social Services	0	\$0
Public Works	4	\$66,642
Registrar-Recorder / County Clerk	1	\$910
Sheriff	39	\$883,265
Treasurer and Tax Collector	0	\$0
TOTALS	133	\$2,172,048
 <i>* Fees and costs reflect invoices paid on or before April 10, 2009.</i>		