

Office of County Counsel **2007 – 2008 Business Plan**



PREPARED BY THE
OFFICE OF

COUNTY COUNSEL COUNTY OF ORANGE

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MISSION OF THE COUNTY COUNSEL:

TO PROVIDE THE HIGHEST QUALITY LEGAL ADVICE AND REPRESENTATION TO THE BOARD OF SUPERVISORS, ELECTED AND APPOINTED DEPARTMENT HEADS, COUNTY AGENCIES/DEPARTMENTS AND STAFF, AND BOARD-GOVERNED SPECIAL DISTRICTS.

OFFICE OF COUNTY COUNSEL 2007 – 2008 BUSINESS PLAN

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EXECUTIVE SUMMARY

The Office of County Counsel is charged with providing civil legal services to County government, e.g., defending and prosecuting litigation, advising the Board of Supervisors, and providing written opinions to County and district officers on matters pertaining to their duties. The Office of County Counsel, as provided by the Government Code, was created on September 16, 1941, by Ordinance No. 432. The majority of the Office of County Counsel's functions is defined and mandated by California statutes, County ordinances, Board Resolutions, Board policy and case law.

The organization of the Office of County Counsel is consistent with its mission and objectives. It places increased emphasis on the need to address the increased breadth and depth of legal services required by the Board of Supervisors, the County Executive Officer, and County agencies and departments; increasing numbers of complex and costly litigation cases; and legislative actions that change the legal environment of various agencies/departments.

LAW PRACTICE TRENDS

In the past decade there has been a shift in the skill mix required in the practice of law. Highly specialized professionals have replaced the generalist lawyer. Attorneys in the Office of County Counsel have always been specialists in public law.

In recent years, the Office of County Counsel advisory and litigation attorneys have followed the general trend towards specialization in substantive areas of practice. Developing and maintaining this high level of legal expertise presents a continuing challenge for the Office of County Counsel.

Advisory attorneys typically provide highly specialized legal services to elected officials, major departments such as the Social Services Agency, the Health Care Agency, Sheriff-Coroner, Probation, Resources and Development Management Department and the CEO, as well as smaller departments. General litigation attorneys are focusing their practice on subjects identified with specific departments, including the Treasurer-Tax Collector, the Assessor, the Orange County Flood Control District, Resources Development and Management Department, Planning and Development Services Department and Human Resources. Attorneys working in the Juvenile Dependency and Mental Health/Probate Sections are likewise engaged in highly specialized areas of the law and are physically located in two outlying locations. Moreover, the Office of County Counsel attorneys are being called upon not only to provide general legal advice and representation, but also to become more involved in transactional services and client training.

Specialization is essential to providing timely, comprehensive legal services, and minimizing the cost of retaining outside counsel.

However, with the advantages of specialization come organizational challenges, such as: 1) ensuring that there is

sufficient ongoing legal training to minimize the disruption to client services related to changing client needs, attorney vacancies and assignment changes; and 2) maintaining a corporate perspective among attorneys working at different locations. The Office of County Counsel uses a staffing model that will meet the clients' needs for highly specialized legal services.

Section I: Agency Overview

VISION STATEMENT

To provide reliable, consistent, defensible, ethical, thoughtful and credible legal advice and representation to our clients.

MISSION STATEMENT

The mission of County Counsel is to provide the highest quality legal advice and representation to the Board of Supervisors, elected and appointed department heads, County agencies/departments and staff, and Board-governed special districts.

CORE SERVICES

The Office of County Counsel acts as “in-house” counsel. All County agencies and departments receive the Office of County Counsel’s services. However, our primary client is the Board of Supervisors. With the exception of core functions of elected officers, services are rendered to other County officers and employees because of their status as agents of the Board. The Office of County Counsel also provides legal services to some independent local public entities such as the Grand Jury and the Airport Land Use Commission.

The principal values provided by the Office of County Counsel are the reliability and consistency brought to the actions of County government. By interpreting the law for client officers and agencies, the Office of County Counsel enables them to reach their objectives in accordance with state and federal law, thereby avoiding, to the extent possible, challenge and confusion. When County actions are challenged in court, the Office of County Counsel defends the County against litigation. The Office of County Counsel may also be directed to bring lawsuits to effectuate the objectives of the County.

The scope of the Office of County Counsel’s practice is extremely broad. From the airport to zoning, there is not a single important issue of law or public policy facing the County of Orange that does not receive some level of scrutiny by the Office of County Counsel. Advice is rendered on matters of great importance to the operation of County government in areas relating to labor and employment issues, purchasing contracts, real estate transactions, public works projects, and matters of great interest to public officials and the public at large, including public records, public meeting laws, and ethics in government.

The Office of County Counsel is dedicated to the principle that thoughtful, credible and ethical legal services lead to fewer lawsuits, lower liability costs, better services and better County government. As members of the County community, the Office of County Counsel is proud of the work we do as the County’s lawyer.

Section II: Operational Plan

A. ENVIRONMENT

CLIENTS

The Office of County Counsel renders legal services to the Board of Supervisors as the ultimate client, and to all County departments and agencies. In addition, the Office of County Counsel provides services to the Grand Jury, the Airport Land Use Commission, and various advisory and oversight committees governed by the Board of Supervisors. Assistance is rendered to client agencies and departments that deal with the public. However, the Office of County Counsel does not provide legal services directly to members of the public.

Indirect Beneficiaries:

The areas of Juvenile Court and Probate/Mental Health have grown to constitute 40 percent of the Office's workload. This portion of the practice serves a County population with specialized needs. The issues in each of these areas have significant ramifications on individual's lives and routinely include abuse, disability, mental health, and death. Service beneficiaries and their respective families can best be characterized as being in highly traumatic, difficult, and emotional situations.

In Juvenile Court, the Office of County Counsel represents the Social Services Agency in a variety of dependency hearings, including hearings to determine whether a legal guardian should be appointed, or whether children should be freed for adoption.

In the area of Probate/Mental Health, the Office of County Counsel represents the Public Administrator/ Public Guardian (PA/PG) in court and as advisory counsel. The individuals served by the PA/PG are among the most vulnerable in the community for whom no other alternative is feasible. These include the mentally ill who might endanger themselves or the community, the elderly and frail who are subject to exploitation, and the heirs of decedents' estates who might otherwise see their inheritances mismanaged.

CHALLENGES

The greatest single challenge facing the Office of County Counsel is maintaining the depth and flexibility necessary to respond to the unpredictable – the fluctuating demands of clients and the random unfolding of economic and political events.

The Office of County Counsel faces significant challenges:

1. **LIMITED AREAS OF OPPORTUNITY FOR REDUCING OPERATING COSTS:** Although 90% of the budget is for salaries and employee benefits, and largely out of the Office of County Counsel's control, the Office of County Counsel aggressively seeks opportunities, the majority of which are small, to save or avoid expenditures for services and supplies.

The Office of County Counsel is committed to maintaining an environment where employees are encouraged to identify cost savings and efficiencies.

2. REALIZATION OF ESTIMATED REVENUE AND COST APPLICATION: Billings for legal services generate revenue that represents approximately 55% of the appropriations budget. The Office of County Counsel uses a daily timekeeping system that captures attorney time in 15-minute increments in order to realize all cost apply/revenue that is appropriate, and continually seeks cost recovery opportunities whenever feasible.

3. CLIENT-DRIVEN WORKLOAD: The Office of County Counsel workload is driven by client demand, variations in number and complexity of cases filed by those suing the County and legislative changes. Many of the most complex and time-consuming projects do not produce revenue. As the need for legal services for these and other general fund departments continues to increase, the alternatives will be to add attorneys using general fund monies, to reduce the scope and level of legal services or to delay delivery of services.

The Office of County Counsel is experiencing increased caseloads in every area, particularly in the number and complexity of purchasing contracts, Sheriff's litigation, election litigation and litigation related to voting systems. There is also an increased involvement in Human Resources issues, including playing a larger role in labor negotiations, human resources litigation, Fair Labor Standards Act matters and employee and retiree benefits.

4. LACK OF OFFICE SPACE: The Office of County Counsel is currently using every available space for staff offices in all three facilities. The Office of the County Counsel projects the need for six additional positions in the next five years. Given the existing space limitations, there would be no office space for these new staff to occupy. As reflected in the Strategic Financial Plan, within the next two years, County Counsel will need funding for an Alteration and Improvement project to build office space in the current building or another location or funding for additional lease space in another facility.

RESOURCES

Since attorney services are the Office of County Counsel's "product," our primary resource is staff. Ninety percent of the Office of County Counsel's financial resources are allocated to salaries and employee benefits. Having sufficient attorney resources to meet our clients' growing need for legal services is our single greatest challenge. This is especially critical in the current economic climate where departments and agencies facing their own budget crises will need more, not less, sound legal advice and representation.

Prediction of future personnel requirements to support our clients is an inherently inexact process. The five-year Strategic Financial Plan calls for the long-term addition of six positions, three of which are expected to be cost offset.

The six positions are:

2007 Strategic Financial Plan Augmentation Requests

- 2 Attorneys for Juvenile Dependency Team
- 1 Attorney for Sheriff Musick Facility Expansion
- 1 Attorney for Advisory Services Workload Increase
- 1 Legal Services Assistant to Provide Support to Attorneys
- 1 Attorney for Litigation Workload Increase

B. ACTION PLAN

STRATEGIC GOALS

- GOAL #1:** Provide highly competent legal advice to clients on matters related to their public duties and responsibilities in the administration of the public's business, in accordance with high ethical and professional standards.
- GOAL #2:** Effectively prosecute and defend civil actions in which clients are involved.
- GOAL #3:** Deliver all legal services to clients as efficiently and economically as possible.

STRATEGIES TO ACCOMPLISH GOALS

Law is still practiced as it has always been, trained people applying legal principles and professional judgment to specific facts. In the practice of law, people are the principal resource. Therefore, the Office of County Counsel concentrates on making employees more productive by (a) providing them with superior training; (b) providing them with advanced technological tools; and (c) maximizing their communications with client agencies.

The Office of County Counsel has adopted an operational model that (1) utilizes quality assurance initiatives designed to assess the quality of the legal services delivered and the anticipated future needs of clients, (2) allows for flexibility in responding to client needs by providing for ad hoc team building, (3) maximizes the available talent pool, and (4) makes work product available and useful to the maximum number of County employees.

Quality Assurance Initiatives: The Office of County Counsel's quality assurance program is designed to accomplish three operational objectives: (1) obtain feedback on how well the Office of County Counsel is meeting client needs; (2) develop methods for the improvement of delivery of services; and (3) obtain data regarding anticipated changes in the service needs of clients.

Client surveys and meetings are conducted on a regularly scheduled basis. Formal evaluation protocols are being used in selected juvenile dependency appellate cases and for General Litigation, Probate/Mental Health and Dependency Trials.

These processes are designed to evaluate and improve the quality of delivery of services and assist clients in developing sound business practices based on past experience.

Regular communication with clients is essential for planning to meet future legal service needs.

Early identification of client needs allows the Office of County Counsel to evaluate the efficacy of developing in-house expertise, move resources, train attorneys, and plan for support staffing versus seeking outside retained counsel. With limited financial resources, early assessment of client needs helps to ensure high quality, effective and economical legal services.

KEY PERFORMANCE MEASURES & REPORTING

Goal #1: Provide highly competent legal advice to clients on matters related to their public duties and responsibilities in the administration of the public's business, in accordance with high ethical and professional standards.

KEY PERFORMANCE MEASURES:

Percentage of clients rating advisory and litigation support as satisfactory or better.

Percentage of written opinions challenged in court or administrative proceedings.

Percentage of challenged written opinions that are upheld.

Goal # 2: Effectively prosecute and defend civil actions in which clients are involved.

KEY PERFORMANCE MEASURES:

Percentage of clients rating advisory and litigation support as satisfactory or better.

Percentage of dependency cases upheld on appeal.

Percentage of mental health cases won or resolved with approval of client.

Percentage of general litigation cases won or resolved with approval of client.

Goal #3: Deliver all legal services to clients as efficiently and economically as possible.

KEY PERFORMANCE MEASURES:

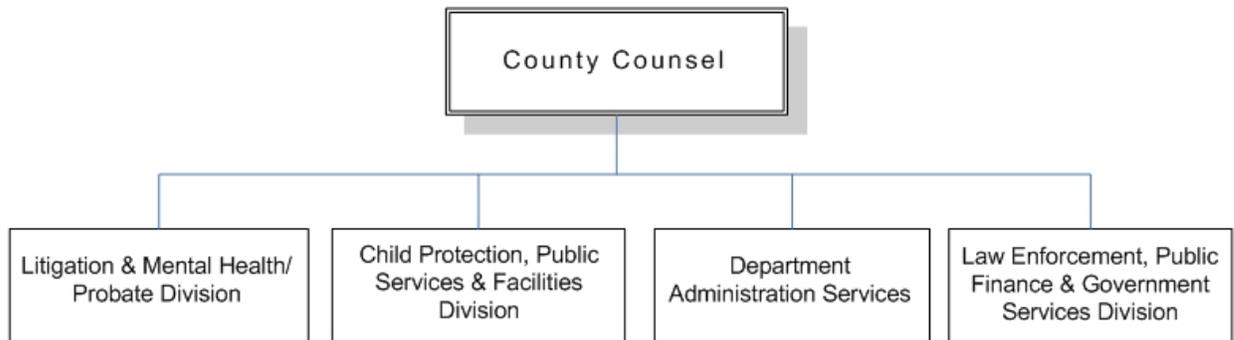
Percentage of clients rating advisory and litigation support as satisfactory or better.

KEY PERFORMANCE REPORTING

PERFORMANCE MEASURE	FY 2006-07 BUSINESS PLAN RESULTS	FY2007-08 BUSINESS PLAN	FY2007-08 ANTICIPATED RESULTS	FY2008-09 BUSINESS PLAN	HOW ARE WE DOING?
<p><u>Percentage of clients rating Advisory and Litigation Support as satisfactory or better.</u> <u>What:</u> Measurement of quality and effectiveness of services provided. <u>Why:</u> Client satisfaction is the primary measure of success for a service agency.</p>	92% based on 2006-07 survey results.	Continue to be rated as satisfactory or better.	County Counsel will be rated as satisfactory or better.	Be rated as satisfactory or better.	Based on survey results and ongoing dialogue with clients, County Counsel is doing well in the area of providing satisfactory advisory and litigation legal services.
<p><u>Percentage of Written Opinions that are upheld.</u> <u>What:</u> Measurement of the quality of legal advice. <u>Why:</u> Provides measure of quality of services provided.</p>	The opinion was upheld.	Maintain 90% or better rate of success.	County Counsel will maintain a 90% or better rate of success.	Maintain 90% or better rate of success.	County Counsel is doing very well in producing quality written opinions that stand up to judicial review.
<p><u>Percentage of dependency cases upheld on appeal.</u> <u>What:</u> Measurement of the quality of services provided by County Counsel. <u>Why:</u> Provides measure of quality and effectiveness of services provided.</p>	The percentage of cases upheld on appeal is over 90%.	Maintain 90% or better rate of success.	County Counsel will maintain a 90% or better rate of success.	Maintain 90% or better rate of success.	Very well
<p><u>Percentage of Mental Health cases won or resolved with approval of client.</u> <u>What:</u> Measurement of the quality of services provided by County Counsel. <u>Why:</u> Measure of the quality of services provided by County Counsel.</p>	90% Won or Resolved	Maintain 90% or better rate of success.	County Counsel will maintain a 90% or better rate of success.	Maintain 90% or better rate of success.	Very well
<p><u>Percentage of General Litigation Cases won or resolved with approval of client.</u> <u>What:</u> Measurement of the quality of services provided by County Counsel. <u>Why:</u> Provides measure of quality and effectiveness of services provided.</p>	Over 90%.	Maintain 90% or better rate of success.	County Counsel will maintain a 90% or better rate of success.	Maintain 90% or better rate of success.	Very well

Section III: Appendices

APPENDIX A. ORGANIZATION CHART



APPENDIX B. SIGNIFICANT ACCOMPLISHMENTS

County Counsel has achieved the following significant accomplishments:

Provided extensive and varied litigation services on matters impacting public policy, including upholding the Registrar of Voters' recount procedures and petition signature verification procedures; and upholding the Registrar's requirements for non-English language petitions; successfully defended the Sheriff against a murderer seeking special privileges in the Jail.

Provided extensive and varied litigation services on matters impacting the County's financial and property interests, including collecting costs for unreimbursed State programs (\$72 million judgment for County); successfully defending and pursuing numerous pieces of litigation pertaining to the County's interests in property and acquisition of property and defending disability retirement claims.

Provided legal consultation on complex or controversial issues with County departments who provide direct services to the public (law enforcement, social services, health care, child support services, and animal control) including drafting, reviewing and/or revising nearly 2,000 contracts.

Drafted legislation and ordinances in diverse areas and advised clients on implementation of many pieces of new legislation.

Provided legal assistance and advice in all County human resources matters, including labor negotiations, employee discipline, legal actions against the County and setting countywide policy.

Continued to implement an ethics training program, as required by AB 1234, for County elected officials and members of boards, commissions and committees. Participated in hosting or presenting at many County Counsel Association of California continuing education conferences, provided an in-house Mandatory Continuing Legal Education program and the Law Awareness Workshop training modules for County clients.

Regularly and successfully quashed (or convinced other parties to withdraw) subpoenas for confidential records held by various County departments, including the Sheriff, Probation, Social Services Agency and Health Care Agency. Assisted many County departments in responding to subpoenas and requests for records under the Public Records Act, including seeking protective orders as necessary, and successfully defended numerous motions for peace officer records.

In juvenile dependency, conducted 760 detention hearings, conducted 760 permanency hearings, conducted 30 client trainings, and appeared and advocated at all dependency hearings for all 3500 dependent children. In juvenile dependency appeals, achieved 101 positive outcomes out of 107 opinions from July 1, 2006 to November 21, 2007, a 94.4% success rate, including opinions enunciating legal principles of statewide significance

In LPS/Probate obtained the Public Guardian's desired result in 97.2% of 517 LPS hearings and won 8 of 9 jury trials. Recovered title to an elder's home via an action alleging undue influence in the execution of a deed. Obtained a \$1.85 million dollar judgment against an errant private professional fiduciary. Defeated an attempt to acquire a decedent's abandoned property by adverse possession.

Recovered, as a part of duties in enforcing bail forfeitures, for the fiscal year ending June 30, 2007, \$1.046 million in forfeited bail bonds and recovered more than \$30,000 in attorneys' fees. The recovered funds were distributed among the County, the Sheriff, Superior Court, and local cities and police departments.