

## C. The Use and Control of Outside Counsel<sup>73</sup>

### 1. Introduction

After a brief review of the legal authority concerning use of outside counsel, this paper will analyze some of the current problems and issues concerning such use. Among the topics covered will be the value and need for outside counsel, and pointers on hiring, control and management such counsel.

### 2. Legal Authority

State law authorizes cities to contract out for legal services. See Cal. Gov't Code § 37103 ("The legislative body may contract with any specially trained and experienced person, firm or corporation for special services and advice in . . . legal matters. It may pay compensation to these experts as it deems proper.") Some city charters may have specific provisions relative to legal counsel and others apply the general law as set forth in the Government Code. In any case, the courts usually have little difficulty sustaining the retention of legal services by a city, even though they may have to resort to an implied power rationale. See Buck v. City of Eureka, 56 P. 612, 124 Cal. 61 (1899); Denio v. City of Huntington Beach, 140 P.2d 392 (1943).

For general law cities, Government Code section 36505 provides, in part, that such cities ". . . may appoint a city attorney . . ." Because this is so general and discretionary there is rarely a conflict concerning use of a city attorney vis-a-vis use of special legal counsel. This is not always true with reference to certain charter cities. Although some charters are very general and do not create a problem with reference to use of outside counsel, certain charter provisions can create a problem.

This could also apply to general law cities to the extent they have an ordinance or policy that precludes hiring special personnel for the performance of services when a regular officer or employee of the city is obligated by law to perform those services. See Montgomery v. Superior Court of Solano County, 46 Cal. App. 3d 657, 121 Cal. Rptr. 44 (1975). This is not usually a problem nor is it a burning issue, however, the question of "authority" can sometimes beg the greater issue concerning the need and justification for special legal services.

Harvey v. County of Butte, 203 Cal. App. 3d 714, \_\_\_ Cal. Rptr. \_\_\_ (1988), illustrates the need to justify special legal services. In Harvey, a taxpayer brought an action to prevent an alleged illegal expenditure of municipal funds; the taxpayer hoped to prevent a reorganization of the office of county counsel which included an increase in the employment of outside counsel. Plaintiff contended that the action of the board of supervisors was beyond their authority because the contracts with outside counsel involve services which are required by law to be performed by county counsel.

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<sup>73</sup> Prepared by Michael H. Miller, city attorney of Arcadia, originally for the 1991 League Annual Conference and updated for inclusion in this deskbook.

The county administrative officer's report in support of the "reorganization" is instructive. The gist of this report (as described in the court decision) is "that the services of outside counsel . . . offer greater efficiency in areas of specialized knowledge, . . . the county counsel and his deputies will remain accessible to provide legal direction on routine (matters). This concept envisioned the county counsel as law office manager with two chief deputies and increased use of special counsel."

The court found statutory authority sustaining the use of outside counsel for litigation. As to other services of outside counsel, the court had to rely on certain statutes giving the board general authority to contract for "special services." The legislative scheme involving counties and pertinent to the court's decision expressed the policy of not undercutting the provision of legal services by in-house counsel through contracts with outside lawyers unless necessary. Wasteful duplication of expense should be avoided.

Implicit in the court's decision is the view that outside counsel can fill valid niches that exist in the provision of legal services by county counsel to the county. As the court implies, a valid approach for all public entities is to properly assess in-house counsel or part-time city attorney duties in order to fill all legal needs through a balance of city attorney/special counsel services.

### 3. The Need and Value of Special Counsel

Donald S. Greenberg's article, "The Changing Role of the City Attorney" in the March 1990 edition of *Western City* magazine mentions the increasing need for outside (special) counsel as a concomitant to the changing role of the city attorney.

As we approach the 1990s, City Attorneys are generalists in a field that used to be a specialty called "municipal law". But municipal law increasingly has become an area composed of a great many subspecialties. The City Attorney of today and the future, is more and more like the general practitioner in medicine - more and more a true general counsel to the municipal corporation having to work harder and harder to keep up with his/her field and no longer able to know instantly, with the easy depth of the specialist, all of the intricacies of vast areas that have become major specialties of their own.

In the area of land use, specialists are able to follow all of the case law developments and new legislation. The volume and complexity of that material has increased dramatically over the years. In the area of personnel (labor relations, employee benefits, discipline), only specialists can stay on top of the flood of developments via new cases and new legislation. The areas of municipal finance, workers' compensation, public works contracting, water law, environmental law, hazardous materials law, civil rights law, tort law, litigation, administrative law, cable television, criminal law, rent control, constitutional law, redevelopment law, and eminent domain law are but examples of areas that have long been, or are increasingly, specialties in and of themselves.

The old model of the general practitioner of municipal law who could advise the governmental entity on nearly everything it might need to know, possibly on a part-time basis, has long since passed.

In recognition of this increasing need for specialization it should be noted that some of the larger city attorney offices have sought to recruit specialists. For example, in the spring of 1991, ads appeared recruiting a "transactional attorney in construction law" for the San Jose city attorney office.

The other serious issue facing municipal attorneys is the ever increasing workload. In 1954, there were eight appellate court decisions affecting cities. In 1990, there were 820 cases!

In April of 1991, a paper was presented at a National Institute of Municipal Law Officers (NIMLO) conference entitled "Expert Allies." An abstract from that article states:

In appropriate circumstances, hiring outside counsel to advise or litigate for the city provides a cost effective complement to in-house counsel. Properly used, private legal "consultants" cost less money and allow in-house resources to be devoted to priority work. Identifying the circumstances in which outside counsel should be used and applying their expertise accordingly are the critical components to the effective use of such legal consultants. The prudent use of outside counsel enhances the effectiveness of municipal representation by providing supplemental "niche" expertise and experience which may be utilized (and paid for) only as the specific need arises."

According to the NIMLO paper, there are two key themes concerning the use of outside counsel:

- Virtually no municipality or municipal agency can afford to build its own all-purpose law firm. The cost of hiring full time experts in all areas which affect a city would be staggering.
- A municipal law firm, therefore, should function as a smaller firm with a *clear strategy* as to what type of work it will handle in-house, what areas it will specialize in and how it will process work that it cannot handle itself. Moreover, it should view itself in this way. A decision to retain outside counsel should not be viewed as a failure of the legal department, or a limitation of the abilities of the full time lawyers, but as an integral part of the legal strategy of the enterprise. This conceptualization will not only ensure that matters for which outside counsel is used will be handled economically and appropriately, but will enable the tasks performed by regular in-house counsel to be handled more efficiently as well.

Every city is different, each city's arrangement for the city attorney service varies, and the capabilities of legal counsel are a variable. The point is to recognize the need for outside counsel and tailor the filling of that need.

There are however, certain areas that are generally more appropriate for the city attorney to perform. These include:

- Drafting of contracts for goods or services frequently purchased by the agency.
- Drafting of proposed legislation, ordinances, and regulations which are within the ambit of the agency or municipality.
- Drafting of zoning ordinances and amendments.
- Litigation in specialized fields, which lends itself to the development and implementation of common approaches. Defense of rent control decisions, defense of zoning board appeals and challenges to standard zoning ordinance, enforcement of building codes, sanitary codes, building permits and the like.
- Defense of certain tort actions peculiar to municipalities of the subject agency. Suits for defects in the way; suits alleging negligence of municipal employees; suits concerning improper sewer installations.

- Defense of suits for tax abatements, and certain eminent domain cases.
- Implementation of employment practices and handling of personnel problems. There can arise situations, however, where it is better for outside counsel to be used.
- The rendition of daily legal advice on most of the activities of the city.
- Handling of city meetings and other internal city procedures.

The goal is to inventory city attorney roles and capabilities that fit the entity while filling the gaps and meeting special needs through outside counsel. To the extent in-house attorneys or the city attorney have developed expertise in a particular area, that should be considered along with time constraints in determining use of the city attorney vis-a-vis outside counsel.

Of course, there are some situations in which, even though there is city attorney capability, the judicious use of outside counsel is advisable. This paper does not deal with those political or conflict of interest situations in which special counsel can be used to mitigate certain problems or allegations. However, city attorneys should keep in mind there are instances in which rationale for outside counsel are not based on the usual staffing factors. The client should be apprised of these situations so they can understand and therefore support such use.<sup>74</sup>

Consistent with the points raised by Mr. Greenberg in the *Western City* article, the city attorney budget in Arcadia includes funds for the *ad hoc* use of special legal services by the city attorney at his discretion. This was prompted by the increasing need in recent years for timely specialized legal advice in areas such as hazardous waste, copyright law and even bankruptcy. This conscious tailoring of legal services to meet the specific needs of the city through outside counsel assistance is a necessary cost that should be accepted as common practice.

#### 4. The Organization of Legal Services

With recognition of the increasing need for legal services and special counsel, cities should periodically consider how they institutionalize their legal services. This is a subject fraught with debatable issues, the following are some general statements for consideration on this subject:

- All cities, even those with large in-house city attorney offices, must recognize the increasing need for special counsel.
- Cities with a full-time, in-house city attorney office are in the best position to effectively hire, manage and control special counsel. The city attorney should be made directly accountable for all outside counsel by the city's elected officials.

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<sup>74</sup> For example, when the city attorney is legal advisor to the city civil service board, outside counsel should probably be retained to act as advocates before the board on adversary matters such as disciplinary appeals. In some cases, the city attorney remains as the advocate and outside counsel is retained as advisor to the board. Ultimately, the purpose is to use outside counsel to avoid accusations and problems of conflict or bias based on a non-separation of functions within the city procedural structure.

- Cities with a part-time city attorney whether a partnership, small firm or otherwise should take steps to assure the propriety of retaining outside counsel by making the city attorney or someone else on the top management staff accountable for the hiring, retention and management of outside counsel.
- The law firm that says they can and will handle everything, if accepted by the city, places the city in the weakest position to assure the propriety of use of attorneys and their control. Although there are several competent law firms that function for cities as city attorney, while other members of the firm perform other tasks as a form of special counsel, the city should be cautious for the following reasons:
  - Who is going to truly manage and control use of special counsel with all of the interests of the city in mind if all those providing legal services are from the same entity?
  - Who is going to really search for the best possible attorney, not only from the standpoint of expertise and cost, but ability to get along and communicate with the clients, if you are locked into one firm?
  - It is not likely that any one firm has all of the true expertise to meet the needs faced by cities.

Of course, there are counter-arguments to the above and perhaps this view is somewhat cynical, however, problems concerning the effect and cost of legal services can stem, in part, from the particular institutional arrangement used by a city. It is a factor to consider.

#### 5. Problems Arising With Outside Counsel

In the April 7, 1994 edition of the *Los Angeles Daily Journal*, the philosophy on in-house and outside counsel was highlighted by a report on the acquisition of Continental Bank of Chicago by Bank America Corporation. The article highlighted the trend towards in-house counsel versus outsourcing of legal departments. In the article, the general counsel of the Bank of California noted that use of outside services is necessary, but in-house legal departments are more valuable because they have better knowledge of the company, and can manage the outside counsel relationship.

Although this article focuses on the public sector attorney and outside council dynamic, many of these issues affect the private corporate sector as well. In the November 5, 1990 edition of *California Law Business* (a supplement to the *Los Angeles Daily Journal*), a round table discussion of corporate counsel concluded that the biggest change for corporate law departments in the 1990s will be how corporations use outside counsel.

In the same issue, the efforts of the head of Xerox Corporation's legal department was hailed as leading a positive revolution. Part of that revolution was the close cost monitoring for outside counsel, and the use of management controls to track costs and cut down on duplication and unnecessary work.

Protection of private resources and profit margin and proper use of public money converge to a common goal, that is the proper use and management of outside counsel. Closer public scrutiny over the use of outside counsel has resulted in the following:

- The grand juries of two large counties in southern California have investigated and filed reports on the use of outside counsel. Generally, they are critical of failing to adequately scrutinize the workings and billings of outside counsel. A response from

the Orange County Counsel office quotes the chief assistant county counsel who stated, "I think generally we will be more sensitive to the question of utilization of outside counsel, to what they are doing and their hourly billings. We also intend to have more in-house attorneys."

- The days of treating certain subjects regarding outside counsel as sacred are over. As exemplified by the practices of Xerox Corporation, close scrutiny should be the current practice.
- As to the topicality and controversy of this subject, at the 1990 meeting of the American Corporate Counsel Association, a major part of the program was entitled "Outside Counsel Fees Under the Microscope."
- Cost over-run problems are an epidemic with regard to contracts for legal services. There is a growing concern as to open-ended contracts.
- Some relatively extreme steps are being taken to remedy the problems. For example, the Los Angeles County Counsel office has begun writing contracts with outside counsel so detailed that, in some instances, attorneys will need client permission before incurring any discovery costs.
- To control outside legal expenses, many corporations (and government agencies) are encouraging competition. Departure from long-term commitments and opening up to different sized law firms should help control costs.

In most cases, outside counsel do a good job with good communication and an eye towards cost-effectiveness. This, however, is not necessarily always going to occur, particularly if the specific task of using and managing outside counsel is not delegated and given high priority, with full accountability. Attention to the various points summarized in the following sections will help.

#### **6. Suggested Guidelines for the Hiring, Control and Management of Outside Counsel**

The following general guidelines have been gleaned from a variety of recent source material concerning outside counsel. The guidelines are presented as a general list, they are not all inclusive, and in some cases are debatable. Nevertheless, like the rest of this paper, they seek to highlight issues and concerns that should be addressed.

**When considering whether to hire outside counsel:**

- Hire outside counsel when a case or subject matter requires special expertise, when litigation or a project would involve too many in-house people, when a conflict of interest arises, when a second opinion is required.
- Consider the more subjective reasons for outside counsel: A fresh view, no built in bias, focus on the case without reference to the historical or political matrix of the city.

**When hiring outside counsel:**

- Rely on the personal interview, have an early meeting for discussion of game plan and philosophy - if strong negative feelings or disagreement occur - go elsewhere.

- Review the following general questions:
  - What is the attorney's effective hourly billing rate? Does bill include secretarial time, word processing, reproduction, long distance calls, time for preparing billing?
  - What fraction of an hour is used in billing? 1/10th is the best.
  - Does the firm have minimum billable hour requirements for partners or associates. If so, this could lead to excessive number of hours.
  - How is travel time billed (i.e. non-productive time)? Portal to portal?
- Avoid form retainer agreements from the firm. Use one developed by the city attorney.
- Look for lawyers not law firms. Consider the attorney's knowledge, skills, personality, and other personal factors. These are generally not transferable.<sup>75</sup>
- Do not hire based on a marketing approach from the firm.
- Find the right lawyer for the task - ask, call, read the newspapers, check seminars, call other lawyers for referrals or recommendations. Do not hire because they are local. With technology (faxes etc.), this is usually irrelevant.
- Use a mix of firms and lawyers to create a competitive situation to keep legal costs down.
- Depending on the particular type of situation, the person recommending special counsel - usually the city attorney - may wish to involve another member of city staff who will have significant exposure to the attorney and should feel comfortable with the selection.<sup>76</sup>

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<sup>75</sup> Some examples may tell the story: A lawyer, hired from a firm to handle a specific case, at some point transfers the case to an associate. It may be that the associate is very competent, but he is not the one hired by the city. In this case, the associate began to handle court hearings. In court he was not the same as the partner. The client did not get what it expected. Again, make it clear who is being hired and who is to do what. To maximize legal services there are always several options available. In another real situation, two lawyers from different firms were hired for one case. One was an expert on the technical substantive law concerning this case and the other was an experienced federal litigator who joined the case at trial preparation time. They worked well together and a highly successful result was achieved.

<sup>76</sup> For example, consider the case where a city manager fired a department head who had civil service protection and appealed the termination. The city attorney was going to be a witness, and therefore sought outside counsel. Certainly he involved the city manager, whose decision was the subject of the appeal, in the search for legal counsel. The selected attorney and the manager established a good rapport that stood the test of a successful administrative hearing and superior court action sustaining the manager's action.

With respect to managing and controlling outside counsel, the following are some suggestions.

- According to Robert Banks, former General Counsel for Xerox, "outside counsel must learn to live with being managed by the client, and specifically the client's in-house legal staff."
- The culture of the relationship between in-house and outside must be changed. According to Guy Rounsaville, Jr., General Counsel and Vice President of Wells Fargo Bank, "Before, outside counsel would take an unnecessary deposition and bill us without even asking. Now they ask."
- Heighten awareness of the importance of cost.
- The closer monitoring of outside counsel must have the endorsement of top officials. In other words, the word must emanate from the city council and city manager that they recognize the need for some leeway and discretion concerning the provision of good legal services, but watch the costs and justify them. In-house lawyers (city attorney) should be given this job as a major assignment with support from the top. The city attorney can then let the outside counsel know that his monitoring efforts and control of outside counsel is by instruction from the client.
- Set ground rules with outside counsel at initial meetings, insist on itemized billings, and know whose working on the case including support staff.
- Procedural matters should be defined prior to employment, such as the basis for the fee, who talks to the client, who is named on the pleadings, who receives copies and of what, whether key dates, depositions, motions, etc. will be communicated, who will assist or arrange for conferences, and the gathering of information.
- Communication ahead of time and every step of the way with full client consultation is the key.
- The best approach with outside counsel is for the in-house people to be in charge of the case. The in-house counsel should make the basic decisions for the city (the client). Being strong with outside counsel and asking tough questions can be critical to cost control.
- A service culture is the atmosphere to create for the competition of law firms for provision of legal services to the city.
- Keeping a lid on outside counsel costs is the single biggest issue facing corporate counsel throughout the country. Law firms big and small are responding to the challenge of capping costs and discussing fees and rates. Some are using a budget-based system where the costs are estimated and not exceeded without authorization from the client.
- Outside lawyers may argue or imply that budgetary constraints will stifle creativity and thoroughness and ultimately diminish effectiveness. This need not be the case. In-house people cannot lose sight of the results they want achieved. Find a balance so you do not underspend.



- Long term relationships with outside counsel and good personal relations can be very beneficial. Familiarity with the entity can be an asset.
- There are situations where outside counsel try to "get their way" and sometimes intimidate the in-house counsel into endless discovery. Keep in mind, that sometimes the best strategy is to let the case sit for awhile. In-house counsel should control the script.
- The role of in-house counsel as a mere traffic cop should be abandoned. Creating a team between inside/outside counsel is necessary to ensure cost-effective results. Teamwork can be established by (1) selection of outside counsel you respect and who can work cooperatively (2) immediately define the relationship including the client's position on whose the boss (3) clarify what's expected, particularly in terms of case budgets, billings, rules for contacting management, status conferences and reports (4) prepare written guidelines for outside counsel (5) communicate frequently and keep outside counsel informed on all organizational changes that could effect his services.
- Litigation requires a dual system of cost control. Outside counsel should be required to break down costs into six major areas and assign to each of these areas a cap and provide an overall cap for litigation. Individual caps cannot be exceeded, so that if there is a savings in one area, counsel cannot use that savings to supplement another.
- Case budgeting or forecasting should be prospective. To analyze outside counsel costs retrospectively, the following should be done:
  - Get a detailed billing memorandum which includes the attorney's names, attorney hours expended, preferably in one-tenths of an hour, a brief description of services rendered, detailed itemization of out-of-pocket disbursements.
  - Get at least monthly billings. Set a reasonable date after the cost of the billing period by which you are to receive billing information.
  - Review bills promptly and discuss questions. Nothing enhances accurate billing more than knowing the person receiving them will review them thoroughly and in a timely fashion.
  - Compare outside counsel's billing to your expectations and counsel's promises. Compare actual to plan. Recalculate by category portions of the bill (such as total time spent preparing summary judgment motion by all attorneys) to discover whether the time expended was in line with earlier estimates.
  - Bring cost overruns to the attention of outside counsel promptly. With too much delay, the problem is likely to continue.

- Use contract provisions to control costs.<sup>77</sup>

To monitor the performance of outside counsel:

- See the city's outside counsel in action.
- Remain in regular contact and communicate on prospects for settlement.
- Outside counsel should not delegate any aspect of the case without consultation and approval of in-house attorney.
- Periodically review documents.
- Review alternate means of dispute resolution and settlement.
- Make sure litigator knows he or she must justify discovery and show why alternate means of obtaining information have failed.
- Regular contact makes litigation counsel pay more attention to the case.
- The private sector recognizes that the lack of review of outside counsel, particularly when management does not include a lawyer, can foster abuse. If you are committed to reducing overhead, management should be enmeshed in the legal process. Someone should have and learn this job, preferably the city attorney.

There is no lack of recent private sector papers and presentations on this subject. The public sector is catching up. In this regard, see the following NIMLO articles<sup>78</sup>:

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<sup>77</sup> As an ultimate example, Los Angeles County has a 17-page standardized service contract. It provides, in part:

- a. County counsel is in charge of all legal services.
- b. The contract requires county review and prior approval of an initial case evaluation and litigation plan - tactical maneuvers and strategy, retention of consultants or expert witnesses, certain travel.
- c. The contract also provides firms with a three-page evaluation and plan form, including a place for cost estimates. The law firm must estimate attorney staffing levels, hourly rates, and the estimated number of hours for each level and update these figures in later case status reports. Written authorization is necessary for a firm to overspend its case budget. Outside counsel are required to submit written reports when they have spent half of their budget and again when 75% is spent. The purpose of copying costs must be explained if they exceed \$100.00 per month.

<sup>78</sup> The National Institute for Municipal Law Officers, 1000 Connecticut N.W., Suite 902, Washington D.C. 20036, 202/466-5424.

- Coordination Between the City Attorney and Outside Counsel presented to the National Institute of Municipal Law Officers - Seattle, Washington, October 9, 1989 by Landers, Clark & Williams.
- Expert Allies - When, Where, and How to use Outside Counsel - April, 1991, NIMLO Conference by S. Shapiro.

The first article sums up the advantages and disadvantages of using outside counsel with a lot of practical advice including cost control via city attorney and city staff involvement. The second article describes the proper use of outside counsel by local government with information on hiring and management of special counsel.

#### 7. Outside Assistance to Hire and Control Special Counsel (Auditors and Consultants)

In the April 8, 1991 edition of *California Law Business* an article appeared entitled "Legal Audit Seen as Potent Ally of In-House Counsel." The article discussed the use of the legal audit as a tool in the battle against rising outside legal costs. According to the article, the type of audit done is not based on an analysis of case strategy, but rather focuses on which lawyers and how many have been assigned to a case and how those lawyers are spending their billable hours. The major problem uncovered by the New York-based firm of Law Audit Services is the duplication of work and work that can be effectively accomplished in a less costly way such as information gathering. In one situation referred to in the article, as a result of audit and negotiations, \$100,000 was saved. The audit cost \$15,000.

The March 1994 edition of *California Lawyer* magazine in an article entitled "Give Us An Estimate," explains that the basic premise of most lawyers that legal fees cannot be estimated in advance was challenged by corporate counsel who have determined that the average costs and typical price ranges of many services, particularly repetitive type projects can be determined. This is valuable as a budgetary tool and for use in negotiating with outside counsel. The main points of the article are:

- Lawyers who learn to estimate their costs accurately will thrive.
- Fixed fees can be too inflexible, however, budget estimates can serve as a warning regarding escalated fees.
- There are some areas such as environmental clean-up, where the factual uncertainties make bills hard to estimate.
- Sometimes the stakes are so high that the incentive to limit fees is not strong.

Despite some difficulties with estimates, the American Bar Association believes that at least 60 percent of all legal work is manageable, routine, and price sensitive.<sup>79</sup>

To some, bringing in an outside firm to do an audit appears unnecessary if people within the organization are performing this function. Also, it can be counter-productive to the in-house-outside counsel relationship. Nevertheless, the availability of this type of service is important as a tool. Further, it is suggested that outside counsel's awareness that the city has, on occasion, spot checked legal fees via this approach can have a salutary effect on control of outside expenses.

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<sup>79</sup> From *California Lawyer*, March 1994 at 27.

This trend towards legal audits began with insurance companies and their growing skepticism of lawyers' bills. According to an article in the July 15, 1991 edition of *California Law Business*, the Fireman's Fund Insurance Company so mistrusts billing practices that it has begun auditing 20 law firms. Some of these audits have led to litigation over legal fees. In one case, reported in the article, a fee dispute was submitted to arbitration. The result: A legal fee of \$350,000 was found to have been overbilled 64 percent, and in another arbitration excessive billing to the tune of \$270,000 was determined. Although these cases demonstrate the extreme, they indicate a problem that must be considered. Perhaps, the legal audit as a tool should be used in those expensive cases or in situations where there is suspicion of abuse.

Concerning the specifics of overbilling, according to most audits, they generally break down into a few main categories:

- Clerical work done by secretaries and word processors, but billed by the attorney as his work.
- Over staffing - this can, among other things, lead to an excessive number of intra-office conferences where small groups of attorneys discuss the case and the city is billed.
- Billing for preparation of the bill itself.
- Excessive time regarding a particular task.

Concerning all of the problems reviewed in this paper, there is a place for the assistance of auditors or consultants. If nothing else, they can further educate on how to deal with these problems. It should be noted that these firms can perform important review functions in the area of outside legal services for litigation and non-litigation items. Also, they will assist with selection of counsel and in resolving fee disputes.

#### 8. Conclusion

In all areas of municipal activity, management and cost control are common subjects. Whether in the general area of contracting out, control of public works contracts, avoidance of overruns, the subject matter is germane to the everyday concerns of city government. The provision and proper use of legal services should be considered in the same light. It is an important function that can save the city money by keeping the entity out of trouble, or by rescuing the city.

Legal services through the use of the city attorney and outside counsel should be constantly recognized as an important and necessary cost of doing the governments business in today's world. If properly handled, council members and managers will have an easier, more productive life, and the public benefits. Like it or not, our society and the on-going rush of litigation and legislation mandates heavy reliance on lawyers. With this reliance, comes the need to effectively hire, manage, and control.

The fact that comparable problems exist in the private and public sector can be viewed as an opportunity for government to learn the lessons evolving from the private area. When the dust settles, these lessons combined with increased discussion and debate should contribute to the attainment of good, responsive legal service, without financial waste or abuse.

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