



IMLA Report to the City of Ft. Pierce: Study of Legal Services

Introduction

IMLA (International Municipal Lawyers Association) is pleased to have this opportunity to be of service to the City of Ft. Pierce, Florida (the “City” or “Ft. Pierce”). As the nation’s largest organization devoted solely to government lawyers, IMLA has a deep understanding of the challenges and opportunities facing legal departments in cities, counties and other municipalities.

Scope

Ft. Pierce has requested that IMLA provide an analysis to help it make optimal use of its legal budget. Specifically, Ft. Pierce has asked IMLA to review whether it can reduce its costs for legal services or make more efficient use of its budget for those services. Accordingly, after meeting with City Commission members and staff and hearing concerns about transparency and accountability, IMLA has focused on ways in which the City might make its legal services more efficient, transparent and accountable without jeopardizing the City’s legal position.

Summary of Findings and Recommendations

As described in greater detail below, IMLA’s findings and recommendations include the following:

- Ft. Pierce’s City Attorney and assistant city attorneys are extremely competent and knowledgeable municipal lawyers having a wealth and breadth of experience in a variety of legal issues that allow them to provide the City with thoughtful legal advice.
- Ft. Pierce is paying slightly lower hourly rates for outside law firm City Attorney services than the regional average, but by absorbing overhead costs the rates are slightly higher than they appear;
- Ft. Pierce is paying slightly more than comparable cities for legal services on a per-constituent basis;
- Ft. Pierce is operating without a formal written contract with its outside law firm City Attorney, which is not the norm;
- The lack of transparency in billing prevents the City’s stakeholders from being confident that they are receiving a full measure of legal services in exchange for the charges allocated to their departments;
- Management has failed to exercise control of the City’s legal work;
- City should put in place a formal written contract with its outside law firm City Attorney requiring detailed and accurate billing, utilizing an agreed-upon menu of matters and recording time and describing in greater detail the expectations and responsibilities of the parties;
- City should require its Manager and its City Attorney to coordinate the legal matters handled by the City Attorney in a more formal process; including, deadlines, priorities and they should report status for



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projects and litigation on a regular basis and in a manner that will allow the Commission to better supervise both the Manager and the Attorney¹;

- City should invest in (or require its outside law firm City Attorney to provide) sophisticated matter management software to facilitate the transparency and detail required to follow IMLA's recommendations;

- City should include a greater number and variety of metrics to measure the effectiveness of the services provided by its City Attorney;

Process

In producing this report, IMLA undertook the following steps:

1. IMLA met with stakeholders within the Ft. Pierce government, including the Mayor and three Commission members to obtain a more clear understanding of their views and expectations regarding legal services. The stakeholders also included the City Attorney, City Manager, Deputy City Manager, City Clerk and several department heads.
2. IMLA sought and received representative legal bills from other municipalities in Florida to evaluate what information is routinely included in billing statements.
3. IMLA reviewed information from its most recent salary survey for cities that are similar in size to Ft. Pierce using a range of population from 35,000 to 55,000 to determine average and mean cost of legal services.
4. IMLA and the City Attorney discussed the procedures followed by the law office in handling matters and litigation and discussed several specific matters.
5. IMLA requested information from the City Manager regarding lists of projects discussed at staff meetings since November 2014. IMLA did not receive a response to this request.
6. IMLA discussed a survey with the City Manager and Deputy City Manager to measure satisfaction of the staff with the City Attorney's office and prepared and forwarded to the City Manager and Deputy such a survey for distribution to staff.
7. IMLA reviewed the audio file of the latest City Attorney evaluation from May 12, 2014.
8. IMLA forwarded a draft of its report to the Mayor, the City Manager and the City Attorney.
9. IMLA received responses to the draft report from the Mayor and the City Attorney and has included the City Attorney's response as an appendix to this report (Exhibit G) and has

¹ The City Attorney states that this coordination has been occurring for several years and directs attention to a memorandum setting out a requirement that all work from department staff flow through the City Manager. While the memorandum exists, if there were effective coordination between the City Manager and the City Attorney the complaints from the staff about projects languishing and other frustrations expressed by the staff would not exist. For that reason, IMLA believes that the Commission should require that the City Manager and City Attorney regularly offer it evidence of that coordination.



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modified the report in part based on the responses it received and as a result of further review.

Recommendations

- Commission should enter a contract with the law firm for legal services.
 - If all or a portion of the contract calls for payment based on hourly fees, Commission should require monthly bills reflecting the work performed, optimally in tenth of an hour increments (or less) rounded to the nearest tenth of an hour, detailing the work performed without jeopardizing the City's interests.
 - Commission should require the law firm to provide a monthly status report.
- Commission should require the City Manager to review and make payment recommendations on the monthly bills in conjunction with the status report.
- The City Attorney should institute procedures, such as interviews (i.e., discuss with department staff their satisfaction regarding the attorney's performance and seek suggestions for improved efficiencies, etc.), to monitor client satisfaction on a continuous basis.
- Commission should develop and implement a customer satisfaction survey and procedure to measure satisfaction with performance of the City Attorney in conjunction with similar surveys for other departments.
- Commission should develop additional performance measures for the law office and monitor performance.
- Commission should require the City Manager and City Attorney to develop procedures to ensure timely and efficient use of the City Attorney services:
 - City Manager and City Attorney should negotiate deadlines for review and performance of work:
 - On routine projects as a matter of routine; i.e., establish a certain amount of time within which a routine matter should be concluded after referral to the City Attorney; and
 - On more complex projects based on the time frame to meet the City's goals for implementation.
 - City Manager should monitor work being sent to attorney and attorney's response
 - Staff meetings should include report from attorney on status of projects to allow discussion of deadlines and problems and include a discussion of



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- staff projects to insure that those requiring legal review are properly forwarded to the attorney; and
 - City Manager should ensure staff and attorney meet to resolve issues to bring projects to completion.
- City Manager and City Attorney should each be held accountable to identify
 - Methods to reduce costs;
 - Increase efficiencies; and
 - Decrease time lag.
- Commission should require City Manager to monitor litigation matters:
 - Review, determine and direct extent of City Attorney involvement in insurance defense matters; and
 - Require estimates for costs of defense and make cost/benefit analysis of defense strategy to make recommendations to Commission.
- Manager should direct that a procedure be established to allow the City Attorney to use the City's IT system in coordination with its needs to insure the City Attorney's ability to serve the City from inside and outside city hall.

Findings

Despite the long list of successful projects and matters² handled by the City Attorney and the extraordinary success rate in litigation handled by the City attorney, a repeated concern expressed by the various stakeholders dealt with accountability and transparency. All recognized that the City Attorney and the legal staff might be the target of unfair criticism by the public and staff, but all believed that a more transparent and accountable system of legal billing would benefit the public and the City. In large measure, the stakeholders believe that the City needs a better system of evaluating its legal needs and services. The departmental staff each expressed concern about various projects that they perceived as languishing in the attorneys' office³. Those staff members whose budgets are billed for attorney services expressed concerns that they are not provided an opportunity to review the bills and report on their accuracy as they must do for other contractors⁴. The City Attorney can provide detailed explanations of how each file is handled and its current status upon request and provides the

² The City Attorney Activity Report for FY 2014 is Exhibit K.

³ Similar comments were made during the attorney's evaluation on May 12, 2014.

⁴ In a conversation with the City Attorney about this issue, he points out that under the City's budget and finance system, the departments' budgets do not get billed for legal services, those services are budgeted as part of the City's annual budgetary process and while Enterprise Fund money may pay fund a portion of the City Attorney's budget, the departments are not actually billed for legal services through invoicing.



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Commission and City Manager a quarterly update on various litigation and matters that have been handled by the office and which are still pending. However, the Commission and staff share a desire for increased communications with their counsel regarding outstanding matters.

The general impression arising from our meetings with stakeholders offers both a positive and a negative perception. On the positive side, the City Attorney offers quality legal services through a staff of highly skilled attorneys and paralegals and the people of Ft. Pierce are blessed with a dedicated team of attorneys and a management team that is committed to making the lives of the people of Ft. Pierce better by enhancing their quality of life and operating an efficient and cost effective government. Each seems to share a love for the City and its success. On the negative side, there seems to be a disconnect between the perception of what legal services are being delivered versus what legal services are being received, how the process works and how the fees are derived. To some extent management and the law office each seem to be working in their own silos, without sufficient coordination. Management does not seem to exercise oversight of work assigned to the City Attorney, nor insure timely performance or coordination of service.

Ironically, Ft. Pierce does not have a formal written contract⁵ with the City Attorney or any of the assistant city attorneys or the law firm by which each is employed. Instead, the attorney client relationship rests on the Charter and a series of resolutions appointing the individuals to the office that they hold and upon understandings developed over the years⁶. In our experience this arrangement is quite unusual. While we know of many cities that appoint attorneys to be their city attorney or an assistant city attorney without a contract, these scenarios generally involve attorneys who are employees of the city and who are covered in terms of salary and benefits by the personnel policies of the city. Where the city attorney is not an employee but an independent contractor, in our experience he or she invariably has a contract with the city that details the terms of the engagement and if it is a law firm that acts as the city attorney, the city has a contract with the firm⁷. Ft. Pierce should design and enter into a contract for legal services that details the terms of payment, the duties to be performed and how the City will be billed, among other terms. In doing so it should seek the help of an attorney who is not associated with the Firm.

⁵ The City Attorney correctly points out that "While it is correct there is no one single document comprising the "contract", there is nevertheless an agreement and mutual understanding of the terms and conditions of which the City Attorney delivers legal services to the City and his compensation therefore."

⁶ The City Attorney correctly points out that the position of the City Attorney constitutes a public office in Florida.

⁷ In researching for this project we note that Deland does not have a written contract with its attorney; the arrangement there involves a lump sum payment to the attorney and is not based on hourly billing. Exhibit F.



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The Firm charges \$135 per hour for the City Attorney, \$125 per hour for the assistant city attorneys and \$55 per hour for the paralegals. The attorneys' fees are significantly less than what appears to be the prevailing hourly rate in the area⁸. However, the City underwrites a portion of each of these fees.⁹ For example, a private practitioner generally must include in legal fees charges for overhead that should be expected to include office space, insurance¹⁰, furniture and equipment, IT services, research services, library, copying and secretarial and administrative support. Ft. Pierce picks up the tab on many of these costs in the City Attorney's budget. Thus, the fees are difficult to compare to fees that include this overhead. Because the Firm also supports offices off the City's property and some services are provided by attorneys and employees at the off-site location, some of the fee derivation includes overhead, making a comparison difficult.¹¹

⁸ The City Attorney's response details information the City Attorney obtained regarding prevailing rates in the area and they are significantly higher than the City Attorney's rates.

⁹ The City Attorney notes: "In actuality, the City "subsidizes" very little overhead to have any real effect on billing rates. For example, the theoretical value of overhead attributable to the City Hall Office and the non-fee portion of the City Attorney budget has been calculated to be less than \$30,000 combined. Given that a minimum of 5,000 attorney-hours are committed to City work annually, this would arguably produce a \$6 per hour "subsidy" increase in rates, again assuming there is in fact a true subsidy. (Footnote omitted.)" IMLA recognizes that the cost of overhead is affected by the number of hours included in the billing so that as more hours are billed there will likely be a reduction in the fixed overhead costs as a percentage of the hourly billing rate.

¹⁰ The City Attorney points out that the Firm has malpractice insurance in the amount of \$2 million that protects Ft. Pierce and if Ft. Pierce moved to in-house counsel it would lose this protection. IMLA agrees with the City Attorney and believes that malpractice insurance is an important consideration in a determination of whether to use in-house or outside counsel.

¹¹ The City Attorney notes: "Additionally, it should be noted that, at any given time, the City Attorney's workload requires the representation of the City in a substantial number of claims and lawsuits. Activity reports document that these legal services and the number of claims and controversies being handled comprise a large percentage of the hours billed to the City. As IMLA hopefully knows, litigation is substantially different than routine administrative matters (e.g. preparing for and attending myriad board meetings, preparing ordinances and resolutions, contract review, etc.). At current billing rates of \$135 for the City Attorney, \$125 for Assistant City Attorneys, and \$55 for Paralegal, the City enjoys a "blended" billing rate far below even the government discounted rate." IMLA agrees that some matters in litigation generally require a higher degree of skill than routine administrative matters. At the same time many of the matters in the Activity reports do not appear to be these types of complex litigation. Generally, insurance defense counsel are paid significantly less per hour than attorneys handling other types of defense and code enforcement, routine foreclosures and routine bankruptcies do not generally command nor demand the higher fees to which the City Attorney refers.



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While it appears likely that the City Attorney's fees are significantly below prevailing rates; without understanding how much the City's contribution to the City Attorney's services supplants overhead and how much overhead the City Attorney devotes to the City's work and how much work is devoted to each matter the City cannot effectively compare its rates with prevailing rates for the matters handled.

Rather than specify how much time the timekeepers¹² charge to specific tasks, the City Attorney lumps all the work it does for the month into a single block of activity and details how much of that activity was performed by the individual timekeepers.¹³ In discussing how work and time are assigned, the City Attorney advises that the City Attorney determines how much time can be billed based on the budget allotment for attorney services and effectively divides that time up by month, week and day. The result is that on a given day an attorney or paralegal may be allotted 5 hours of duty and on another day 8 hours and on another 1 hour.¹⁴ In essence the schedule may or may not be the same for each day, but over the course of the year, the schedule is designed to equal the amount of time allowed by the budget based on the Firm's billable hours. In planning the work, the City Attorney assigns the attorneys and paralegals sufficient work to fill their daily time block in conjunction with what the City Attorney perceives to be deadlines set by management, the Commission and litigation. If a new case or a project comes in that requires immediate service, the City Attorney amends the daily plan to adapt to the new work and the higher priorities of the work. At the end of the day, each timekeeper rounds out their day to the closest one half hour.¹⁵ This system results in monthly bills that tend to be relatively consistent¹⁶.

¹² In law firm billing a timekeeper is a person who performs activities for a client at a specified rate per hour and who keeps the time for their work.

¹³ Attached as Exhibit D are representative bills from the City Attorney.

¹⁴ This description of how a schedule is designed is not intended to replicate an actual schedule, but we use it to describe how the process works.

¹⁵ Thus, if the timekeeper had a two hour block and worked two hours and ten minutes the time billed would be two hours and if the time worked was two hours and twenty minutes, the time billed would be two and a half hours.

¹⁶ The City Attorney explains that there is no dearth of work so that the time each day is filled by work that must be performed. Thus, the system does not lend itself easily to reducing legal costs absent some decision by the Commission to exercise more control of what legal services are to be provided and by having the City Manager more actively involved in reviewing the legal bills and services and including more specific detail regarding the tasks performed, when they are performed and the time spent on those tasks.



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According to the City Attorney the City Manager's policy requires all non-litigation work to flow through the City Manager before reaching the City Attorney, except for routine matters. Despite this policy, many projects (ordinance drafting, contract drafting, policy review and drafting, etc.) seem to reach the City Attorney without first going through the City Manager. Some of the projects that department directors described as languishing in the City Attorney's office seem to fit this category and may have suffered from a lack of clear direction regarding how they fit in the Commission's or the City Manager's goals. In some, the City Attorney's office worked on the projects and spent considerable time passing comments back and forth between department staff before ultimately developing a final product. To some extent it appeared in at least one of these projects that the relationship between the attorney's office and the department staff soured. Ultimately, the process seems to need more involvement by the City Manager in setting deadlines for legal review and for ensuring the projects that go to the attorney fit into the Manager's and Commission's goals including developing ways to reduce the amount of back and forth that occurs without either the attorney or staff fully understanding what each is saying. As an example, in Ft. Pierce departmental staff draft ordinances and contracts and submit them for the attorney's legal review. Most are handled expeditiously and the process works well¹⁷. However, some are more complicated and these are the ones that seem to languish. Our view in looking at memos going back and forth on one project leads to the conclusion that neither the attorney nor staff member completely understood what the other was explaining and that a face to face meeting might have helped. Similarly, some of the issues were policy issues that needed to be addressed as business decisions by the Manager or by the Commission and the system did not provide for that to happen. If the City does not want projects to languish (even the few that do¹⁸), it needs to establish a mechanism to assure a timely resolution of the legal review. For that both the Manager and the Attorney need to be accountable.

It appears that when departments forward work to the City Attorney, the City Attorney reviews the referral, opens a file and assigns the matter to attorneys or paralegals to handle. To some extent the process includes unnecessary delays and expense associated with the assignment process that could be removed by creating workflow procedures that allow routine work and specific types of matters to be assigned and files opened without the City Attorney reviewing

¹⁷ In some instances IMLA reviewed email responses that were almost instantaneous to questions posed by staff to the attorney. Where projects languish, the lack of ownership of the project seems the most likely culprit for the delay and can be solved by a better system of coordination and reporting by both the Manager and the Attorney.

¹⁸ While most projects seem to move smoothly, the City needs to put in place a management driven process that sets priorities, deadlines, provides transparency and holds appropriate staff, either departmental or attorney, accountable for the project and the process.



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each matter. For example, some work routinely processed by a paralegal could be processed and reviewed by an attorney without the formality of the City Attorney first reviewing the matter, opening the file and assigning the work.¹⁹

The appointed City Attorney and Assistant City Attorneys are all highly skilled and competent attorneys with significant experience in municipal law. While conversations and review of work have been necessarily brief, we believe that Ft. Pierce is very fortunate in having the quality of legal counsel that it does. To some extent this quality and experience also creates a hurdle to reducing the City's legal costs. As each of the current attorneys brings a sterling reputation for legal skill to the City's work, the result is that the cost of that work is higher than if the Firm also included first year associates and less experienced attorneys assigned to the City's work. Typically, in an in-house setting less experienced lawyers drawing significantly lower salaries enable a city to reduce its costs of legal services. For example, a new admittee might be expected to earn \$60,000 or less and a person having five years of experience somewhere around \$85,000.²⁰ If the Firm were able to hire a new admittee or less seasoned associate to handle some of the less complex matters and set rates at an accompanying lower schedule, the City's costs might be decreased.

Based on our review and these findings, IMLA recommends that the Commission and staff work together to, establish a reporting hierarchy for legal services; determine a process for resolving the difference between business requirements and legal requirements and assuring conflict resolution when departmental interests differ between the staff and the attorneys; establish a mechanism to report and manage work flow and provide feedback; develop an evaluation mechanism to measure how clients (Commission, Manager, staff, board) feel about the services being provided by the City Attorney; determine acceptable service levels, ratings and benchmarks to guide a review of the legal services being provided and offer some

¹⁹ The City Attorney explains that he only opens files that are new and that routine and recurring projects go directly to the paralegals and assistant city attorneys pointing out that in its Draft Report IMLA described "a perceived process whereby the City Attorney engages in "prior review" of matters before making assignments in the office. This is correct, but only occurs with new projects or lawsuits that are not within the primary responsibility or recurring routine matters which the Assistant City Attorneys or Paralegals handle directly." (Footnote omitted.) IMLA reviewed a description provided by the City Attorney of a matter involving the release of a lien. (See: Exhibit "E") At least for that matter, the process appeared to follow the description that IMLA provides in its Report. A more detailed billing procedure that IMLA recommends could help to determine whether the lien release matter that IMLA reviewed fell outside the norm or constituted the norm.

²⁰ Using the calculations described later in this report those amounts work out to \$49 per hour and \$69 per hour respectively for in-house counsel at Ft. Pierce.



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suggestions for establishing benchmarks, evaluations and monitoring the legal services being provided.

The City Attorney responded that surveys seeking to determine how the City Attorney is perceived to perform are not the norm in Florida. IMLA agrees but believes that the introduction of a survey could help the City Commission and the City Attorney determine how better to deliver services to City staff and the Commission. Some communities use surveys effectively and they will likely become more prevalent. Indeed, tools such as “Yelp” enable people to evaluate services that cross multiple disciplines and types of service and have become routine throughout the economy. People evaluate the medical profession through “healthgrades.com” and various platforms offer evaluative tools for private attorneys. Rather than singling out the City Attorney, the Commission should consider implementing a process that allows it to similarly seek information about how other departments are perceived to perform. Ultimately, the process could include reaching out to residents to evaluate the City’s performance although the City’s size may be sufficiently small that such an exercise is unnecessary. An internal survey of the City staff regarding the delivery of legal services will help both the Commission and City Attorney analyze service delivery.

Comparability – Population and Finances

IMLA’s contract did not include a study of whether the City should consider an in-house attorney as opposed to its current service delivery. Based on the block billing IMLA believed that it would be too difficult to make a recommendation without having a clear idea of what the City attorney’s work involves. Because the billing structure makes it difficult to determine the amount of work that is routine as compared with work that would be farmed out even if the City had in-house counsel, the City needs to develop a system to better understand what projects and work it is spending its legal budget on. Estimating costs for an in-house counsel can be difficult as salaries can range based on years of experience and the prevailing salaries in the area. Assuming a salary of \$200,000 and the City’s current benefit rate of 46% of salary the City’s cost for one attorney would be roughly \$292,000; if the salary were \$150,000 the cost including benefits could be projected at roughly \$219,000²¹. A full time attorney would be expected to devote 40 hours per week less vacation, holiday and sick time plus time for

²¹ These figures are for salary only and do not include overhead. Because Ft. Pierce already pays most of the overhead associated with its legal services the per hour figure should provide a fair comparison.



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continuing legal education and other business related leave, resulting in roughly 1800²² hours of service per year. So for an attorney paid a salary of \$200,000 plus benefits at 46% of salary, the City would be paying \$162 per hour. At a salary of \$150,000 plus benefits at 46% of salary, the City would be paying \$122 per hour. As mentioned previously, the City could expect to pay less to less senior attorneys and new admittees. Obviously, the numbers change based on the salary of the attorney and the number of hours used to calculate the hourly cost.

As part of an analysis of the value of legal services some general conclusions can be made from comparisons with other cities. IMLA's Salary Survey for 2014 included a number of cities within the population range of Ft. Pierce (35,000 to 55,000). The cities in the survey generally have staffing numbers similar to Ft. Pierce while their total budgets vary widely. The surveyed cities have average legal budgets of \$633,000 with a budget median of \$492,000. Assuming a population of 43,000 and a legal expense budget of \$680,000, the per capita cost for legal services in Ft. Pierce is \$ 15.81. Using the cohort of cities from the IMLA survey as described above the per capita cost average is \$14.20 and the median is \$11.25. Thus, the cost of legal services in Ft. Pierce is slightly above both the median and the average. Similarly, in examining the cohort of cities from the IMLA survey, the legal budgets for those cities average 0.84% of the City's total budget and the median for the cohort is 0.61%; whereas, Ft. Pierce's legal budget appears to be a little higher than either the average or the median of the cohort.

Bear in mind that statistics can be deceiving and do not offer absolute answers to questions. So, while Ft. Pierce's legal costs are above average and above the median for the surveyed cities, they are far below those of many cities in the survey and may be far below those of non-surveyed cities. For example, in doing a study for Wellington, FL, IMLA found that per capita legal costs were \$19.06 for the City of North Miami Beach²³. At the time IMLA prepared that study North Miami Beach had a population almost equal to that of Ft. Pierce. In short, legal costs can be a function of a city's size, the number of different functions and services it provides, the litigiousness of the community, and the prevailing salaries, fees and rates of the legal profession in the area. That Ft. Pierce's legal costs slightly exceed the average suggests that the City may find ways to reduce the costs without negatively affecting the City.

²² IMLA bases 1800 hours of service on a calculation using 2080 as the normal work year of 40 hours per week times 52 weeks, less 10 paid holidays, less 15 days (three weeks vacation), less 10 days sick leave, less 5 days of professional leave for CLE or other professional improvement. If these amounts of leave vary from those allowed in the Ft. Pierce personnel policies they number can be adjusted upwards or down to establish a more accurate per hour figure.

²³ North Miami Beach has actually increased that cost per person to \$20.20 based on a 2013 population estimate of 43250 and a city attorney budget for FY15 of \$873,531.



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Managing Legal Services

The Contract for Legal Services.

The City advises that it does not have a formal written contract for legal services; rather, the Ft. Pierce Commission appointed the City Attorney and each assistant to act on its behalf but without a formal contract. IMLA believes that Ft. Pierce and the City Attorney should enter a formal written contract that describes in detail the City's expectations and duties and the Law Firm's expectations and duties. There are a number of methods by which a law firm might be hired to perform services for the City which could include:

- Memorialize the current approach in a contract.
- Enter a contract for a lump sum amount to perform all or a negotiated number of services to be paid monthly or annually.
- Enter a contract that specifies a variable hourly rate for timekeepers based on their expertise and the type of work they are performing
- Enter a contract that specifies
 - The amount to be paid for regular city attorney services,
 - The amount to be paid for additional city attorney services; and
 - The amount to be paid for special city attorney services.

Regardless of the form of contract agreed upon, the contract must specify details of the representation including who can authorize billable work. IMLA has been in the process of developing model contracts for city attorneys but has not finalized a draft for either in-house or outside city attorneys. A draft of one of the model contracts in development is attached as Exhibit A as an example of a format that might be considered²⁴. The determination as to the form the Agreement takes and its terms must be negotiated between the City Attorney and the Commission and Exhibits A, H and I simply offer some ideas of what terms might be considered. Whatever choice Ft. Pierce and its attorneys choose, Ft. Pierce should consider seeking members of the community to provide volunteer services to review and advise the Commission on the terms of the contract or hire an attorney to review the contract's terms and advise the Commission if the contract becomes complex. Most contracts between cities and their

²⁴ Attached as Exhibit H is the contract used by New Port Richey and as Exhibit I the contract used by Treasure Island. Each offer different approaches to contracting for legal services. The City Attorney advises that he has other forms of contracts that might also be considered and IMLA agrees that there are many different options available.



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attorneys do not involve independent review by committees or outside attorneys. A relatively recent case²⁵ involving the former Miami City Attorney and a dispute over his contract suggests that a city commission ought to seek independent advice when developing its contract with its long-time city attorney.

Billing

The contract should include language that details how the attorney will bill the City and what must be included in the bill. IMLA believes the City needs to develop a mechanism that will allow it to better monitor its attorneys' billings to allow it to audit those bills if necessary and to enable it to manage the services to determine if the costs of some services warrant the expense. IMLA understands that the format for bills has been discussed between the Commission and the City Attorney over the years and the current form was agreed upon between them. Nevertheless, there are other cities in Florida that are billed on an hourly basis and receive bills that reflect the work and the time devoted to the work by the attorney²⁶. It is customary both in private and public settings for attorneys' bills to be formatted as to subject, task, time spent and by whom. Increments vary, but tenth of an hour increments seem to be relatively common although exact time-keeping may become more popular with the increased ability to measure time using work management systems, apps and programs. Similarly, most corporations and governmental entities place limits on what services can be billed: time spent in billing, secretarial time, and other matters are generally included in overhead and are not normally included in the attorney's billing.

None of this discussion should be considered a negative reflection on the Ft. Pierce City Attorney; instead, IMLA believes that Ft. Pierce can enhance its ability to manage its legal services by implementing prudent and effective management principles as to how its legal services are performed and billed. Simply stated, block billing does not enable the City to evaluate whether its costs are fully justified by the benefits achieved. At the same time, the public information laws in Florida can be used to disadvantage the City if too much information is included in the bills. While there is a delicate balance that must be considered in presenting bills to the City, most of the work²⁷ probably does not involve projects the disclosure of which

²⁵ Fernandez v. City of Miami.

²⁶ Nevertheless, it is true that there are others that receive bills without that detail.

²⁷ The City Attorney disagrees with IMLA's statement that "most of the work probably does not involve projects the disclosure of which would jeopardize city interests". IMLA stands by its statement. The list of projects and billing information do not allow anyone to fully understand the City's interest or the Attorney's work in those projects.



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in a bill would jeopardize City interests. IMLA sought and received bills from a number of cities and public entities in Florida and most included the following information: The client/project being billed; Date of service; timekeeper (attorney/paralegal); amount of time; and a narrative of the work that was performed regarding each task²⁸.

Once it receives bills that detail the work being performed, the City needs to assign someone to review the bills for accuracy similar to how other contract performance is reviewed. The City Manager should be assigned this function and for matters that cannot be reviewed and evaluated by the City Manager²⁹ a member of the Commission should be delegated the duty. If the work is being performed for an entity not under the City Manager, then that entity should be assigned the duty of reviewing and approving the bill.

Ft. Pierce could benefit by developing a mechanism that would allow its managers to evaluate the necessity for legal expenditures in specific cases and matters³⁰. While the process may currently exist and may be performed *ad hoc* by the attorney's office, a formalized process that includes a cost benefit analysis that determines whether to spend attorney time on matters as they are handled might eliminate the perception that the City is overspending:

- Litigation
 - Insurance cases: The City Manager/Risk Manager should evaluate the exposure to the City that the case imposes both as to retention before insurance kicks in or as to excess of insurance. This would allow the City Manager/Risk Manager to calculate the importance of the City Attorney's time involvement in the case. Assuming the exposure is minor, so too should the cost to the City be of the attorney's time. This recommendation substantially changes how the City currently handles these types of cases and elevates the City Manager/Risk Manager's role.³¹

²⁸ IMLA received bills for legal services from New Port Richey, Ft. Myers Beach, Deltona, Treasure Island, Madeira Beach, Palm Bay and the Ft. Pierce Utility Commission. Exhibit J. All but Deltona receive bills with the detail IMLA recommends. Deltona appears to have a contract that pays a set amount per month for all legal work and the detail of the bills is more descriptive than what Ft. Pierce receives, but not as descriptive as the others. As part of its review IMLA also received a bill used in Haines City that is more descriptive than what Ft. Pierce now uses and appears to keep actual time.

²⁹ For example, the City Manager may have a conflict or the work performed by the attorney does not involve the City Manager and is being performed by the Attorney for the Commission directly.

³⁰ This assumes the city continues to receive these services on an hourly fee basis. If the manner of billing these services were to change, so too should this evaluation process.

³¹ The City Attorney points out that the City Charter, §46 provides specifically that matters involving claims against the City be referred to the City Attorney and that after an investigation of the claim, the City Attorney report to the



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- No insurance: The risk manager in liability cases should evaluate the potential loss to the City and ask the City Attorney for an estimate of legal fees that may be required to provide a defense. In cases that do not seek damages, the City Manager should ask for an estimate of the cost of defense and the City Manager, City Attorney and Commission should meet to discuss the defense, estimated cost of defense and determine if the cost argues in favor of settling, changing policies or otherwise concluding the case more quickly. No doubt this process has been informally followed in the past, but it could be more formalized by a contractual provision that calls for the attorney to submit an estimate or budget³² for the case.
- Affirmative litigation: The City Manager or Commission should ask the City Attorney for an estimate of the cost of pursuing litigation where the City is a plaintiff in advance of engaging the City Attorney on the matter. Obviously, a claim of \$1000 will likely not justify spending \$10,000 to recover it. The City Attorney reports that this cost benefit analysis is being made in conjunction with management. IMLA recommends that the City formalize this process.
 - If there are many similar small claims an alternative to an hourly billing method should be considered. For example, if the City has a number of claims that collectively total thousands of dollars but which as individual claims are relatively small, a fixed fee contract to handle all of the cases on a contingent fee basis could prove more cost effective. Debt collection cases generally fit this mold.

Commission on it. Many cities assign this type of duty to their risk manager and it might make sense for the City to consider having the Risk Manager carry out this function under the direction and supervision of the City Attorney, or change the Charter. City Charter, §45 also discusses the duties of the City Attorney and provides in part: “When required to do so by the city manager or the city commission, he shall prosecute and defend[,] for and in behalf of the city, all complaints, suits and controversies in which the city is a party. He shall furnish the city commission, the city manager, the head of any department, or an officer or board not included in any department, his opinion on any question of law relating to their respective powers and duties.”

³² In this context an estimate or a budget should not be seen as a limit on the ability of the City to defend itself; i.e., giving the plaintiffs notice that if they run up costs, the City will be required to yield. Rather, the intent is to allow the City Manager and Commission to evaluate the cost of defense, likelihood of success and the benefit of defending the case versus finding a less costly resolution. If not resolved, the estimate or budget would be revised regularly and Commission and City Manager could reevaluate as the budget changes. It is not intended that these informal estimates and budgets involve limits adopted by the Commission, but opportunities for the Commission and Manager to evaluate their litigation posture in specific cases, including whether to seek a different contractual arrangement for the specific matter with the City Attorney or another attorney.



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- Code enforcement litigation may also lend itself to a different contracting method, such as per case, per docket or a lump sum amount for handling all code enforcement cases during a month or a year or similar period.
- Non-litigation
 - Generally, most work that does not involve litigation reaches the City Attorney through the City Manager. Some work is relatively routine and some is not. The City Manager should maintain a list of all work and projects that are submitted to the City Attorney and regularly compare that list with one maintained by the City Attorney to assure there are no gaps. The City Manager should negotiate deadlines for the completion of projects with the City Attorney both as to routine matters (a general deadline) and non-routine matters (a specific deadline for the project). The City Manager and City Attorney should discuss the status of matters and work to conclude them promptly. This should be a joint effort with each taking responsibility to bring the matter to conclusion.
 - Interviews with staff provided different perceptions of reasons for delays in getting approval from the City Attorney.
 - *Legal advice on business matters.* In both private and public settings issues arise as to whether the attorney is offering legal or business advice and who ought to be empowered to make a decision if business interests and legal advice conflict. As an example, one staff member described that a contract was disapproved solely because the contract required venue for litigation to be outside St. Lucie County and possibly outside the State of Florida (the City Attorney explained that there were multiple issues). The Attorney is perfectly correct to advise that a decision to accept venue outside the State is adverse to the City, but venue while a legal issue, is essentially a business decision; i.e., is the cost of accepting venue outside the State acceptable when viewed against the probability that no litigation will occur or the value of the contract or liability exposure³³. So who decides?

³³ In his response to the Draft Report where IMLA makes this point, the City Attorney advises that “This is inaccurate and should be corrected. In Florida, all municipalities possess common law home venue privilege. Venue of any civil action against Fort Pierce may only be brought in St. Lucie County. Venue is never waived by the Commission. Litigating claims in such venues as New York, California, etc. are not optional.” IMLA takes the position that while Ft. Pierce may be best served by retaining its common law right to venue in St. Lucie County, unless there is law to the contrary, venue may be waived and the decision to waive venue is one based on an organization’s determination as to whether the value of the contract exceeds the risk of litigation outside the



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In Ft. Pierce it does not seem to be clear who makes the decision. Ultimately it should be the City Manager³⁴ who makes these business decisions and in those matters of significance where the City Attorney disagrees with the City Manager and believes the City is at great risk, the Attorney and the Manager should seek a policy decision from the Commission.

- *Failure of Coordination.* The director of the City's MIS department related a situation where her department had developed policies for the City's use of its technology and began implementing the policy only to have the City Attorney's office stop the implementation³⁵. The City Attorney advised that the law office had not reviewed and approved the policy and the MIS director advised that the policy had been discussed at several staff meetings attended by the City Attorney. IMLA's report is not intended to focus on who may have been right and who might have been wrong, but clearly something went wrong.
- *Ownership.* Ft. Pierce should evaluate how it manages its work flow. According to staff, apparently, ordinances are primarily drafted by agency staff without any help from the attorney until the draft is submitted to the attorney. The attorney then reviews the draft and suggests changes and sends it back to the staff to make the changes, which can include looking at other examples of ordinances or rewriting the text. It might be more productive for the staff and attorney to work together from the outset and take joint ownership of the project. For example, a department may

home county. The City Attorney's response affirms IMLA's advice that Ft. Pierce needs to require its attorneys to clearly identify when they are providing legal advice that identifies a legal requirement or legal advice that identifies a business decision and which is which. If Florida prohibited a city from waiving venue as we believe Arizona does, then IMLA would agree that the issue is a legal one, but if Florida allows a city to waive venue, then the decision to do so or not is a business decision properly left to the City Manager or the Commission and not the attorney.

³⁴ IMLA assumes the Commission can override the City Manager or set a different policy. This is clearly a Charter issue and a question of law that the City may want to confirm as IMLA is not in a position to offer a legal opinion and is only making an assumption that if the City delegates through its Charter the business operations of the City to the City Manager, then the Manager would have the authority to make this type of decision. That assumption may be wrong and if so, it would be the Commission who must make the business decisions.

³⁵ In actuality the City Manager stopped implementation of the policy on the advice of the City Attorney.



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believe an ordinance is necessary, or the Commission has asked that an ordinance be developed, or a board or commission has asked that an ordinance be developed; rather than, moving forward without involving the attorney, the department should discuss the proposed ordinance with the attorney, get advice and decide upon how the work will be shared to produce a finished product as quickly and efficiently as possible. The City Manager needs to play a more active role in seeing that the workflow moves in a timely manner by setting deadlines and understanding the status of work being handled by the attorney and insuring the attorney understands how the work fits into the Commission's and Manager's goals.

- *Use of forms.* While the City uses a host of forms, they may not be used as effectively as they could be. For example, a proposed contract (which the City seems to have as a form) could be included in procurements at the bid stage so that the bidder is able to agree to the contract or offer exceptions to its terms as part of the bid process. Doing so should reduce delays in negotiations of a final contract and the amount of attorney time involved in those negotiations. Some decisions on business policy could be made in advance recognizing that some vendors have their own terms and conditions that they will not vary based on the City's limited purchasing power. The goal for the Manager should be to use these forms in a way that reduces the amount of attorney time at this stage of the contract process while still effectively protecting the City. Staff mentioned a concern over the amount of time it takes to release liens established through the code enforcement process. The City Attorney explains that releasing liens has not been a high priority of the Manager and they are handled accordingly. Nevertheless, there are forms that could be used, filled out by staff, reviewed by the attorney and filed without what looks to be the more complicated process currently in place³⁶. A benchmark could be set to establish a

³⁶ A new billing format might also help to determine the cost the City incurs to release a lien. One of the lien releases IMLA reviewed involved a lien that had been reduced to \$30. The attorney's office and management spent far more than \$30 in time processing the lien release. The Commission should understand these costs and seek to reduce them or recover them.



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clearer priority for handling these relatively routine matters. More to the point, someone needs to take responsibility for the amount of time the City Attorney spends by understanding and approving how the time is spent, working to reduce the amount of time when it seems at odds with the benefits being derived, and exercising management controls over matters within the City Attorney's area of responsibility.³⁷

Supervision

The City Attorney responded to the Draft Report by describing the relationship between the City Manager and the City Attorney as set out in Ft. Pierce's Charter. In doing so the City Attorney explains: "The Charter is very specific that the City Manager has supervisory control over all other Departments and Department Heads [except the City Clerk, the City Attorney and the City Auditor]. Any suggestion by IMLA that Department Heads exercise supervision or control in any respect over the City Attorney's office or in the exercise of its independent legal judgment, whether as to "business decisions" in defending lawsuits, approval of legal expenditures, etc. would appear to create Charter infractions. There could also be a potential infraction of the Rules Regulating the Florida Bar." (Footnote omitted.) The City Attorney also explained that "Instead of control and oversight measures, which are again reserved to the Commission, the City Manager's office is more properly seen as supervising the **work flowing into** the City Attorney's office **from staff** and not the reverse situation. This fosters an important **cooperative**, not supervisory, relationship which the Charter envisions."

The City Attorney's point regarding the Charter is well made. Yet common sense dictates that the Commission as a part time body that supervises a vast array of projects and services through the City Manager can also delegate to the City Manager the responsibility to review the City Attorney's bills for payment and to determine if the work was actually performed without crossing the line of supervision. Similarly, the City Attorney's point regarding the Florida Bar Rules is well made. Nevertheless, every client has the ability to define the scope of

³⁷ There is a fine line between an attorney's ethical duty to retain independence in performing legal services and recognizing that the attorney ultimately must answer to the client. Generally, the line is drawn between policy goals which the client can establish and how the policy is carried out (tactics) which is within the attorney's judgment. Nevertheless, a manager can and should determine where costs might be reduced. For example, most organizations attempt to reduce the number of timekeepers attending the same meeting; or demand that if a form is used that the fees reflect the use of the form rather than the cost of its development.



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representation and there should be ample room in the Rules of the Florida Bar for a client to determine if it wishes to spend money on a matter and to determine whether and to what extent to follow its attorney's advice.

If the City Attorney believes that this issue is a legal one that requires a legal opinion, then IMLA suggests that the Commission seek independent legal advice as to the extent to which it can authorize the City Manager and staff to review legal bills for payment, assign projects, make business decisions and make business decisions regarding litigation.³⁸ Similarly, the Commission and its City Attorney can ask the Florida Bar for its opinion on the extent to which the City can direct its attorney as to "business decisions" in defending lawsuits, approval of legal expenditures, etc.

Transparency

One way to increase transparency could be to provide more detailed reporting to the Commission, the Manager and the public. Montgomery County, MD provides an example of an organization where its attorney reports regularly³⁹. Its attorney provides a report on all open litigation (attached as Exhibit B) and various other work being handled by the office either directly from a work management report or through statistical information. The information allows the public and managers to better understand what the attorney's work involves and provides valuable management information. For example, assessing which departments generate the most suits and of what type can help managers determine if there are problems that need to be resolved either in the administration of a department or in its policies.

Matter management software (or a Work Management System "WMS") provides a resource to both the City and the attorney in developing this type of reporting. In addition to providing the attorney with a system that organizes and manages the work assigned to the law office, the system can provide the City with real-time updates on the status of matters and cases and will allow the attorney to give the Commission and staff rapid updates on the work without the time and expense of having to find and review a file. Some matter management systems include time keeping functions to better enable the Firm to provide billing that includes that information. As an example of cost for these types of software, IMLA contacted a provider of a matter management system designed for municipal law offices about two years ago. It quoted

³⁸ Charter Section 45(c) seems to provide the necessary authority to the City Manager to make business decisions regarding litigation, but that may also be an issue for independent legal analysis.

³⁹ http://www.montgomerycountymd.gov/cat/oca_report_page.html



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a price between \$7,000 and \$11,500 to set up a system for three users and between \$1000 and \$1850 per year starting in the second year of the contract to maintain the system depending on the modules purchased.⁴⁰

The City Attorney described the difficulty his office faces in performing many of its functions without being able to effectively interface his outside law office and staff with the in-house computer system. In addition, assistant city attorneys report difficulties in accessing and using the Internet to do research based on limitations imposed by the MIS department. Most companies, including IMLA use VPN⁴¹ systems to interface satellite locations, teleworkers and contractors with their internal systems. While there are risks, companies as large as Microsoft and as small as IMLA have found solutions and Ft. Pierce should be able to as well. Limiting the ability of the Firm to productively use current technology can decrease productivity and increase costs.

Performance Metrics

Ft. Pierce needs to develop additional metrics from those in place to determine how well it is being served and metrics that it can compare with other cities to help it determine if it is being over served or underserved. According to the Ft. Pierce budget documents, the following are performance measures for the City Attorney⁴²:

- Prepare legislative orders (e.g. resolutions, ordinances, & City plan orders) within 7 working days of the original request.
- Provide response to queries from City staff within a 24-hour period from the time received.
- Percentage of lawsuits tried with favorable disposition.

These metrics are important and help in evaluating the service provided. Many communities have similar metrics. Some metrics are more helpful than others. Some simply measure amounts of work; while others, like the first two above, measure the timeliness of work and these objective standards are useful. Developing subjective standards are more difficult and need to be carefully used as personalities can infect the results.

⁴⁰ The higher price quotes include the time keeping function.

⁴¹ Virtual Private Network.

⁴² The City Attorney advises that his office did not participate in the development of these metrics nor was the office aware of the metrics that were included in the budget.



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Developing metrics, whether for a city attorney or another department of government, reflects the priorities of the City. Using the examples already in place, Ft. Pierce appears to place value on the timeliness of legislative orders and on attorney response to staff inquiries, and to winning its litigation. But what value does it place? Clearly, winning litigation is important, as the goal is 100%, but as to responding to staff and preparing orders, the goals are not so high.

Another city with which IMLA is familiar used a larger set of measures to reflect the values of that community:

- Number of ordinances and resolutions written
- Number of real estate transactions closed
- Number of titles searched
- Number of pending condemnation cases
- Average number of days from project completion in contested condemnation cases to first resolution
- Average number of days to process an ITB or RFP from receipt of project to Legal Dept. approval
- Number of contracts written or reviewed
- Average number of days to process a contract from receipt to Legal Dept. approval
- Percentage of back taxes collected in first year of collectability
- Number of public meetings attended

In its timeliness metrics, that city reports that it takes an average of 2.05 days to process a contract and an average of 4.41 days to process an ITB or RFP. So rather than measuring a percentage of timely responses, it captures the amount of time to respond and creates an average. Both metrics provide additional information that could help Ft. Pierce in determining performance than do those used by Ft. Pierce alone. For example, if the percentage of timely responses; i.e., responses within 24 hours was 99% but the average time to respond was 36 hours, one could assume that at least one or more projects languished. With that information managers should be in a position to assess which projects were delayed and why.

While the following examples may not apply to all cities or in all circumstances and may not be metrics important to Ft. Pierce, these common measurements can help Ft. Pierce identify and formulate its own metrics. Yet, developing these metrics and maintaining them can be a chore and cost more than the metrics yield in value and no metric should be adopted if it is not going



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to be used. Computerizing the City Attorney's work management system should be a priority to enable it to establish and report its work more efficiently and transparently.⁴³

Objective metrics:

1. General

- a. Ratio of legal services budget to City total budget
- b. Cost of legal services per capita
- c. Cost of legal services per City FTE's
- d. Liability Claims per 10K population

These are relatively simple metrics to keep and to maintain. They can help the City determine if its expenses for legal services are out of line with other cities of the same size and number of employees and budget.

2. Amount of work:

- a. Number of citizen calls received
- b. Number of FOIA requests handled
- c. Number of contracts drafted/reviewed
- d. Number of other legal instruments drafted/ reviewed
- e. Number of ordinances drafted
- f. Number of meetings attended (Commission, Board, staff, etc.)
- g. Number of public hearings attended
- h. Number of written legal opinions issued
- i. Numbers of cases opened, and closed annually by case type (bankruptcy, civil rights, contract, employment, eminent domain, labor, property, subrogation, collections, subpoenas of City records, tax issues, TRO's/Injunctions, Tort, Writs).
- j. Litigation cases by client departments (police, fire, code enforcement, planning, parks, etc.)
- k. New matters opened each year by issue type (Financings, appeals/hearings, bankruptcy, collections, construction agreement, consultant agreements, development related agreements, grand jury requests/subpoenas, interagency agreements, labor, mediation, formal legal opinions, ordinances drafted, public records requests, resolutions drafted, contracts approved as to form, staff reports reviewed, general advisory assignments, etc.)

⁴³ A Work Management System should be included in the City Attorney contract. The Contract should discuss who provides the WMS, who owns it and the data, and what happens upon termination of the contract. Similar provisions should be included regarding the City's files.



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- l. New assignments by client department
- m. Litigation cases opened/handled/monitored by insurance counsel, outside counsel or City Attorney

These metrics can be captured relatively easily using a WMS, but would be cost prohibitive without one. Nevertheless, the information can help the City determine where its litigation originates and that information ought to allow the Commission and Manager to determine if there are causes for the litigation that ought to be analyzed and department activity, policies, procedures or personnel reformed or changed.

3. Timeliness of work

- a. Time to respond to citizen phone call
- b. Time to respond to request for opinion
- c. Time to review/draft contract
- d. Time to draft ordinance
- e. Time to review/draft other legal instrument
- f. Time spent at meetings attended (Commission, Board, staff, etc.)
- g. Time spent to research and draft legal opinion

Again, these metrics will be cost prohibitive without a WMS, but if maintained can enable the Commission to see if its policy goals are being met. This might be a place to determine if there are other metrics regarding timeliness that could be considered, for example how long a release of lien should take.

4. Economic measures

- a. What percent of the prevailing rate for private counsel (generally and by practice area) do the city's attorneys charge⁴⁴?
- b. Collection: Cost of collecting delinquent debts as a percentage of debt recovered.

These measures can help the City determine whether its fees for legal services compare favorably or unfavorably to the market place and whether other economic metrics reflect success, failure or a need to improve handling matters for the City. They can lead to helping the City calculate whether to farm out some or all of its legal work to other firms or enter other forms of contracts for specific types of work with the Firm.

5. Damages litigation:

- a. Percentage of claims resolved without payment

⁴⁴ This measure more appropriately acts as a measure for in-house counsel.



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- b. Percentage of claims that go to judgment/dismissed/settled
- c. Ratio of cases won vs. lost;
- d. Was result below Plaintiff's last demand, below City's last offer?
- e. Ratio of settlement and judgment amounts to Plaintiff's original demand.
- f. Number of cases by type handled by each attorney

Rather than simply keeping a won/lost record for litigation, other factors should be measured. The City Attorney's policy to aggressively litigate claims against the City has the effect of reducing the number of frivolous claims likely to be filed. Ascertaining how many cases are resolved without payment or are dismissed at the pleading stage, can help determine if the cases are weighted towards the frivolous. The fewer frivolous claims the more the City should be looking at its policies and practices to determine how they can be changed to avoid adverse judgments. Statistics can help the City determine if its settlement practices are well structured. Understanding the number of cases an attorney carries can help determine if the office is overwhelmed or carrying a reasonable number of cases. Insurance defense firms routinely carry 70 cases per attorney, local governments handling federal claims under Section 1983, Title VII and other federal statutes can expect their attorneys effectively to carry no more than 20 cases at any one time.

6. Code Enforcement:

- a. Ratio of cases won vs. lost
- b. Amount of fines collected vs. fines charged
- c. Cost of collection vs. amount of collection

These metrics help the City evaluate the effectiveness of its attorneys' handling of code enforcement matters, but ought to be maintained in conjunction with metrics that measure how the code enforcement officers are doing.

7. Proactive representation

- a. Number of legal alerts or newsletters issued to staff and Commission
- b. Number of training sessions for Commission and staff

To be truly effective a City Attorney should help train staff and Commission by sending regular updates on changes in the law or decisions of courts that may be relevant to the goals and policies of the Commission and staff. Similarly, the City Attorney should be expected to conduct in-house training programs to discuss legal issues that the City faces or may face, so that the staff and Commission are aware of the legal issues as they adopt goals and policies. Training can also reduce the amount of attorney time needed in handling matters where staff understands the legal issues involved and adapts its practices accordingly.



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8. Maintenance of legal knowledge

- a. Specialization through certification in local government law
- b. Number of CLE hours per years
- c. Number of presentations to attorney groups on municipal law

A city whose attorneys are recognized by others as the best in the business can be a source of pride to the city and can reflect well on the city. While a road worker may need a truck, a shovel or a bulldozer, an attorney's tools are the attorney's knowledge and the attorney must maintain that knowledge either through mandatory CLE or by seeking additional training and knowledge through other programs. The City should measure whether the attorneys are maintaining or improving themselves.

Subjective Measures

Ft. Pierce should develop a method to have various constituencies evaluate the City Attorney, but should not do so in isolation. A customer satisfaction form is one easy tool and Ft. Pierce should adopt one (sample attached as Exhibit C), but an annual review is also an important tool. The customer satisfaction form should be used regularly to evaluate the attorney's performance in specific matters and available to the staff being served. At some point in the future the Commission might determine to tailor a customer satisfaction form for outside contacts and a sampling taken of people who have had contact with the City Attorney and outside counsel. IMLA does not recommend surveying outside contacts at this time.

The evaluation should go to the manager and the Commission for review. Because these types of forms ought to be anonymous, the manager and Commission are cautioned to use them appropriately; i.e., to recognize that they may be infected by vindictiveness or by favoritism and only should be considered to evaluate the perception of service. Attorney, Manager and Commission should discuss the evaluations to determine methods to change the perceptions if necessary and respond to agreed upon shortcomings while applauding successes. Metrics can include:

- a. Above average rating from Internal Customer Satisfaction Survey.
- b. Ability to distinguish between legal requirements and business decisions
- c. Appropriate involvement during Commission and Board meetings
 - a. Provide necessary legal advice
 - b. Act as attorney not as Commission member or board member

Outcome based metrics and goals:

- a. Outcome: legal support to the City is timely



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Internal clients report timely document preparation -
Internal clients reporting legal advice was timely –
Internal client satisfaction with Civil Support Staff –

b. Outcome: legal support to the City is effective

Internal clients reporting document preparation met client objectives
Internal clients reporting legal advice was clear and relevant –
Internal clients reporting litigation and administrative hearings were effective –

Goals should be negotiated between the Commission, Manager, the attorney and staff. Some of these goals are more important than others, but metrics and the goals they include should reflect the Commission's priorities. These goals also assume a measuring tool.

Conclusion

Ft. Pierce should feel comfortable that it has an excellent legal team representing its interests. By formalizing its contract with that team and including in the contract requirements for more transparency in billing, more reporting on the work performed and allowing more direction by the client of what work needs to be performed, the City can better determine and understand its cost of legal services. Similarly, by having the City Manager and the City Attorney develop a more formalized approach to coordinating legal services and reporting on them to the Commission, surveying staff regarding the performance and developing and monitoring performance metrics, the Commission can determine how well its legal services budget is being spent.

In order to reduce the amount of paper that comprise the exhibits, the exhibits are available at the following links:

[Exhibit A: City Attorney Model Retainer Agreement](#)

[Exhibit B: Montgomery County Activity Report](#)

[Exhibit C: MoCo Survey](#)

[Exhibit C: Riverside](#)

[Exhibit C: Survey](#)



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[Exhibit D: Ft. Pierce Legal Bills](#)

[Exhibit E: 1104 Jasmine Avenue ROL letter](#)

[Exhibit E: Lien Release Chronology](#)

[Exhibit E: 1104 Jasmine Avenue Lien Package](#)

[Exhibit E: 2729 S US Lien Package](#)

[Exhibit E: 2729 South US Highway ROL Letter](#)

[Exhibit F Legal Service Billing](#)

[Exhibit G:IMLA RVS Chuck Thompson](#)

[Exhibit H: New Port Richey City Attorney Retainer](#)

[Exhibit I: Treasure Island City Attorney Agreement](#)

[Exhibit J:Haines City Meeting](#)

[Exhibit J: Ft. Pierce Utility UA ATTY Bills](#)

[Exhibit J:January 2015 Vose Law Billing](#)

[Exhibit J: New Port Richey 1-15-15 BMO](#)

[Exhibit J: Ft. Myers Beach Invoice](#)

[Exhibit J: Treasure Island Invoice](#)

[Exhibit J: Madiera Beach Invoice](#)

[Exhibit J: Palm Coast Invoice](#)

[Exhibit K: Special Projects](#)

[Exhibit K: Summary Report](#)



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[Exhibit K: Activity Reports](#)

[Exhibit K: Civil Service](#)

[Exhibit K: Code Enforcement](#)

[Exhibit K: CRA October 2013 Through September 2014](#)

IMLA appreciates the opportunity to work with Ft. Pierce on this project and commends the Commission for taking on this project.