

**CITY OF COSTA MESA
CITY ATTORNEY'S OFFICE
INTEROFFICE MEMORANDUM**

Attachment 4

To: Honorable Mayor and Council Members
From: Tom Wood, Acting City Attorney
Date: December 12, 2003

Subject: Comments on Management Partners Report on
Costa Mesa City Attorney's Office

Now that Jerry Newfarmer has given you his report on the Organizational Review of the Office of the City Attorney (the "Report"), I believe it will be helpful for you if I supplement it with some additional information and some observations of my own. I hope this will assist the effort to develop the Implementation Plan. You may find this added information surprising and I hope reassuring. I *especially* ask you to consider my COMMENTS FIVE, SIX, SEVEN and EIGHT in this memo.

As most of you indicated at Monday's Study Session, I too appreciate the amount of work that went into the preparation of the Report. My comments below correspond to the five section headings used in the Report and the page numbers in brackets refer to pages in the Report.

A. Current Organizational Structure, Staffing Level, and Work Assignments

"Recommendation 1: Balance the attorney workload. The City Attorney should better balance the workload, with the Deputy City Attorney to be assigned some of the time-intensive transactional work from the Senior Deputy. Code Enforcement cases are considered to be fairly routine and would be a good assignment for the Deputy, freeing up the Senior Deputy to pursue more complex matters including litigation (see Recommendation 12 below) to reduce external counsel costs."

COMMENT ONE: [Page 6] I appreciate the Report's conclusion about workload imbalance. I have discussed this with the Deputy City Attorney, Linda Nguyen, and I agree she should be assigned more work and I will be doing that.

COMMENT TWO: [Page 6] The discussion about the staffing ratio of attorneys to support staff was a little confusing to me. The report states that the current ratio in the City Attorney's Office ("CAO") "compares *unfavorably* with the benchmark average" of 1.4 to 1. I think our present ratio of 3 to 1 is actually a *favorable* ratio. This staffing level is currently working for us primarily because we effectively use our personal computers and prepare most of our own documents. Our 3 to 1 ratio is more in accord with the ratio in major, high-tech private law firms than with the 1.4 to 1 ratio shown in the Report as its benchmark.

COMMENT THREE: [Page 8] I also agree with the Report's conclusion that we do not need to fill the vacant position of Legal Secretary at this time. I reached this conclusion myself at the beginning of the year and I stopped the pending recruitment process to fill that position.

B. Use of External Counsel

“Recommendation 2: Charge external counsel costs related to tort litigation to the “Legal” line item in the City Attorney portion of the Self-Insurance fund rather than to the “General Liability” line item in the Risk Manager’s Self-Insurance fund. The only way to truly establish the cost of external counsel is to have a separate line item for such charges. At present, these costs are being lumped into a pot with other costs and this does not allow for quick analysis and assessment of how the City Attorney’s Office is managing these costs. Also, the Office is charging these costs to a fund under control of another department, without any oversight or approval process. In order to maintain clear budgetary control, the City Attorney’s Office should only charge to the City Attorney Administration portion of the Self-Insurance fund and the city’s Risk Manager should not budget for legal costs in her portion of the Self-Insurance fund to ensure there is no double-budgeting.”

COMMENT FOUR: [Page 9] The CAO charges and budgets to those City accounts and funds that the Finance Department asks us to use. I am open to the recommended changes and wish to hear from the Finance Department about Recommendation 2. I have no objection to this change. Up until February 2003, the CAO did charge external legal fees to separate accounts¹, but in February we complied with a Finance Department request to begin using the General Liability account instead.

COMMENT FIVE: [Pages 8 – 11] The Report’s discussion of external counsel costs makes clear from the beginning “we are unable to determine with any certainty what” were the amounts of **ACTUAL** external legal costs. The author felt “it is not possible to segregate out the actual cost of external counsel . . . without a detailed review of city invoices and billings (which is extraordinarily time intensive and not within the scope of this project).” [Page 9] Instead, the Report relies on a “rough approximation” [Page 10] for the major part of these costs by using amounts from the Risk Management, General Liability account.

Even though the Report does not use actual external legal costs, I used actual costs last June when I drafted my report to the Council entitled Options for Obtaining Legal Services (the “Wood’s Report”). Last Sunday I reviewed the computer printouts I received from the Finance Department from which I had extracted the actual amounts I included in my report. It was evident to me that the “rough approximations” used in the Management Partners Report are **considerably higher** than the actual amounts. For example, in Table 3 [Page 10] the Report shows **\$2,110,367** from the Risk Mgmt -General Liability account as part of Costa Mesa’s external counsel costs for FY01/02. **In fact, only \$621,431 of this amount was actually for external counsel costs. Table 3 overstates the outside legal fees in FY 01/02 by \$1,488,936.** These non-legal fee expenditures that do not belong in Table 3 consist of \$1,141,694 that was for the City’s reserve fund for claims; \$185,660 for payments by the CAO for

¹ We charged tort defense legal fees and costs to account 530302-602-12100-50320; we charged discretionary legal fees to account 530300-101-12100-50320; and settlement payments to account 540101-602-12100-50320.

settlements; and \$161,582 for payments by Risk Management for insurance premiums and settlement of miscellaneous small claims.

I have extracted the actual amounts for external counsel costs from Finance Department printouts I obtained. For comparison, I show below the new, actual "TOTALS" in line 4 of Table 3 from the Report.

Table 3: Total Estimated External Counsel Expenditures in Costa Mesa

	FY00/01	FY01/02	FY02/03
General Fund	\$207,515	\$191,730	\$199,882
Self-Insurance Fund	\$443,802	\$0	\$1,325
Risk Mgmt – General Liability	\$176,984	\$2,110,367	\$662,931
TOTAL:	\$828,301	\$2,302,097	\$864,138
	NEW: \$635,555	NEW: \$813,161	NEW: \$485,818
%City Operating Expenditures	1.03%	2.73%	0.94%

If these new totals are used to re-compute what percent Costa Mesa's external counsel costs are of the total City Operating Expenditures, the revised percentages are reduced dramatically and are much closer to the benchmark percentages in the Report. Costa Mesa's revised percentages are: FY00/01 = .79%; FY01/02 = .96%; FY 02/03 = .53%.

After Monday's Study Session with the assistance of the Finance Department I updated the numbers in my Wood's Report to show the actual expenditures for the last three fiscal years. Because these numbers were available, I feel I ought to provide them to you. The updated expenditure amounts for both in-house and external legal services of the Costa Mesa CAO are shown below:

WOOD'S REPORT (updated)

FY 00/01			FY 01/02			FY02/03		
<u>In-house</u>	<u>External</u>	<u>Total</u>	<u>In-House</u>	<u>External</u>	<u>Total</u>	<u>In-House</u>	<u>External</u>	<u>Total</u>
\$646,489	\$635,555	\$1,282,044	\$672,940	\$813,161	\$1,486,101	\$723,452	\$485,818	\$1,209,270

COMMENT SIX: [ATTACHMENT E] In ATTACHMENT E the Report shows the external counsel costs for the comparable cities. Knowing how hard it was last June for Bobby Young (our City's Accounting Supervisor) and me to obtain accurate legal cost numbers from other cities, and knowing how important these numbers were as the basis for the benchmark percentages relied on in the Report, I decided to check with one of these cities about its cost for external counsel legal fees as shown for it in ATTACHMENT E. I asked the City Attorney of the City of Simi Valley if \$389,009 represented the total amount his city spent for outside counsel in FY02/03. He said it did not. He believes the \$389,009 shown in Attachment E as Simi Valley's external legal costs only represents that city's legal fees charged to its Tort Defense fund. Simi Valley's City Attorney told me his city has significant other outside attorney legal costs that are not included in ATTACHMENT E. For example, his city has hired legal specialists to represent it in some NPDES(Federal Clean Water Act) litigation and

these legal costs are paid from a different city fund. Therefore, the Report understates the external counsel costs incurred by Simi Valley.

Also, the Report understates the legal costs shown for the City of Orange, another one of the comparable cities whose expenditures form the benchmark numbers. Orange's FY00/01 amounts shown for external expenditures and/or for in-house expenditures are understated by \$50,020. This is clear because when you add the external legal costs and the in-house legal costs the sum is \$50,020 less than the total legal services amount shown for Orange in Attachment F of the Report.²

These two examples of the Report's understatement of comparable cities' external legal costs illustrate the importance of the Report's own warning that "one must view the benchmark comparisons with great caution." [Page 10] In addition, as Mr. Newfarmer emphasized in his answers to your questions on Monday during his oral presentation, some of the Report's extrapolations lack statistical reliability because of the small number of cities that responded to his survey.

C. Total Legal Service Costs

COMMENT SEVEN: [Page 12] The numbers for Costa Mesa's total legal service costs contained in the Report do not reflect the actual total costs because they include the inflated, rough approximations used for external counsel costs as discussed in Comment Five above. Also, the Report contains significant errors for Costa Mesa's in-house legal costs. Each of the amounts for all three fiscal years for in-house legal services shown in Table 7 and in ATTACHMENT G is overstated by about 20%. The Report inadvertently inflates the in-house costs by mistakenly including costs paid to OUTSIDE ATTORNEYS. The erroneously included amounts are \$207,515 for FY00/01, \$191,730 for FY01/02, and \$199,882 for FY02/03. After correcting the total legal service costs, Costa Mesa's totals are more in line with the 1+% norm noted by Management Partners in their Report.

COMMENT EIGHT: [Pages 13] The Report states that "it would appear safe to conclude that the costs of running an in-house City Attorney's Office average about \$700,000 - \$800,000 per year." As explained in Comment Seven, the in-house costs shown in the Report were inadvertently inflated. If these figures are corrected, then the actual in-house legal costs for Costa Mesa come well within this average in the Report. The actual in-house costs are: \$646,489 for FY00/01; \$672,940 for FY01/02; and \$723,452 for FY02/03.

D. Management Issues

COMMENT NINE: [Pages 13 – 18] I appreciate the information in this part of the Report. There is much food-for-thought and it will require more time to fully analyze these matters. I am sure there are ideas here that when implemented could be beneficial.

² Attachment E shows Orange expended \$454,474 for external counsel costs; Attachment G shows Orange expended \$722,522 for in-house legal costs. When these two amounts are added together, the total is only \$1,176,996, whereas Attachment F shows the total cost for Orange's legal services for FY00/01 to be \$1,227,026, or \$50,020 more. Therefore, these costs in Attachments E and/or G must be understated.

If any of you have an interest in getting a first-hand, insider's opinion of what it is like to work in an office where I am the City Attorney, we have available in the community Eleanor Egan and Celeste Brady. I hired both of these ladies to work with me as city attorneys in the Costa Mesa CAO. I am sure they would be happy to give you their personal insights about how the CAO performed during their tenures with the City. Eleanor worked here from 1-4-82 to 2-9-90 and Celeste from 7-7-83 to 10-15-86.

E. Best Approach for Costa Mesa

COMMENT TEN: [Pages 18 – 23] The substance of this part of the Report was similar to the Wood's Report I presented to the City Council last June. Both reports reach the same conclusion – Costa Mesa should continue with an in-house City Attorney.

“Recommendation 15: Assign management oversight of the City Attorney’s Office to the City Manager. As pointed out by City Council members themselves, it is difficult for the Council to oversee the City Attorney’s Office to any real degree and it is appropriate for the Council to engage the City Manager to assist in this endeavor. For this reason, it makes sense to assign responsibility for management oversight of the City Attorney’s Office to the City Manager. There is no more rationale for having the City Attorney report directly to the City Council than there would be for the City Finance Director, for example. Indeed, the City Council similarly assigned the City Manager the responsibility to supervise the work of the City Clerk’s Office, with positive results for the City.”

COMMENT ELEVEN: This is one of the most dramatic recommendations in the Report. Mr. Newfarmer stated that there are a variety of ways this oversight could be implemented. I am looking forward to seeing how this will be treated in the Implementation Plan. Because the City Manager and I have a history of working closely and well together, I know I would have no difficulty working with Allan under such a structure if this recommendation is adopted by the City Council.

“Recommendation 16: Consolidate the support staff of the City Attorney’s Office and the City Manager’s Office. This idea has been discussed by the City Manager and the Acting City Attorney, and offers the opportunity to realize economies of scale in a mutually supportive environment. There is some potential that the additional support staff workload discussed above could be absorbed, at least in part, by existing City Manager’s Office staff. Some analysis will be required to ensure that such a consolidation is correctly executed, in a way that will realize the benefits of consolidation without disrupting work currently being performed.”

COMMENT TWELVE: As noted in this recommendation, the City Manager and I began considering this possibility last Summer. I think we both feel that some economies and efficiencies can be achieved by such a consolidation. This action could tie-in well with various ways Recommendation 15 could be implemented.

CONCLUSION

In closing, I want to make some final comments about the organizational review of the CAO conducted by Management Partners and the process used. Jerry Newfarmer and Rebekka Hosken acted in a professional and courteous manner in conducting its survey of the Costa Mesa CAO. I in no way fault them for their reliance on a “rough approximation” of external legal expenditures. The Report makes very clear that the external counsel amounts for Costa Mesa were “over-stated to some unknown degree.”
[Page 12]

I offered them my full cooperation throughout the process. I asked to review the draft Report to check it for any factual errors and this they agreed to allow. During their fact-gathering process they chose not to ask me for, or inform me of, the omitted actual numbers for our external counsel expenses. They probably did not seek my assistance because they wanted to maintain separation from the CAO.

I was given the draft Report on Tuesday, November 25th, right before I left to spend the Thanksgiving holiday with family in San Luis Obispo County from November 26th to November 30th. I examined the draft Report in the short time available and I noticed several factual errors and proposed some corrections. On Tuesday, December 2nd, I emailed these suggestions to Management Partners and they accepted most of them. I also informed them that I was unable to reconcile some of their numbers with the City's numbers contained in my Wood's Report. Their Report was sent to the City Council on December 5th.

It was not until last Sunday (December 7th) that I was able to fully analyze and compare the more complex data embedded in the dollar amounts for legal expenditures in the Report. I feel that if the Report had not been required for presentation at Monday's Study Session Jerry Newfarmer and I would have been able to agree on what were the actual amounts spent for external counsel costs and the amounts spent for in-house CAO operations. I do not think any consultant could have done a better job in the limited time and budget allowed Management Partners.

I hope that the above discussion provides useful information for you. If you have any questions about these ideas and data, please let me know.

cc: Allan Roeder
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