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Date: January 9, 2017

To: Honorable Supervisors of the County Board

cc: County Clerk George Christensen (c/o Janelle Jensen)
County Executive Chris Abele
Interested Parties

From: Deputy Corporation Counsel Colleen Foley

Re: Referral of File Amendment 1A062

During the 2017 Adopted Budget Amendments, this honorable body referred File Amendment 1A062 to the Office of Corporation Counsel as part of adopted budget amendments. File Amendment 1A062 states as follows:

Corporation Counsel will provide a report to the County Board by the January 2017 cycle detailing current policies and procedures for the retention of outside legal counsel by county elected officials and/or entities and possible options for strengthening the county's ability to ensure taxpayer's dollars are not spent on frivolous lawsuits by county elected officials and/or entities.

Retention of Outside Legal Counsel for Lawsuits: WCMIC

For lawsuits where Milwaukee County is in a defensive posture and attorney's fees are sought, the Wisconsin County Mutual Insurance Corporation (WCMIC) makes the decision on retention of outside counsel. That includes lawsuits brought against any Milwaukee County public official and/or entity excepting the Airport and BHD, which the WCMIC do not insure. WCMIC's decision is based upon multiple factors that include complexity of the case and required resources (time and personnel¹). WCMIC gets a volume discount from firms because it can offer a greater amount of work and establishes its own range of rates for partners, associates, and paralegals based upon expertise and complexity of the case.²

¹ Fully staffed, the Office of Corporation Counsel includes 13 attorneys and 7 support staff. Corporation Counsel performs a variety of statutory duties (guardianships, Watts' reviews, involuntary civil commitments) and other duties (advising and representing County departments in litigation matters before state, federal, and administrative bodies, and counseling and staffing various boards (County Board, Pension Board, Mental Health Board, etc.)).

² Once the County meets either its per claim or aggregate deductible with WCMIC for a particular claim year, attorney's fees, settlement, and other litigation costs are covered by WCMIC (not County) dollars.

Retention of Outside Legal Counsel for Lawsuits: Office of Corporation Counsel

Corporation Counsel makes the determination on outside counsel in defensive matters where WCMIC is not implicated and for affirmative actions where the County entity or public official initiates the lawsuit. There are no formal policies and procedures per se concerning the retention of outside counsel. The office essentially uses the same criteria as WCMIC in conducting its assessment regarding expertise and appropriate resources. The office makes an initial review of the merits, but a frivolous lawsuit is rarely apparent on its face without intensive research, discovery, and/or court rulings. And if the matter involves a dispute between branches of government or constitutional officers, it is an outright conflict of interest for Corporation Counsel that must be sent to outside counsel.

Corporation Counsel must obtain Board approval for contracts exceeding the statutory \$100,000 threshold. Those submissions include information on the attorney's hourly rates. When retention of outside counsel is necessary, Corporation Counsel expects and requests discounted rates from an attorney's usual and customary hourly rates. And most firms value business with the County and the usual public exposure, so discount their services up front.

Recommendations

Corporation Counsel provides the Judiciary and General Services Committee with a monthly litigation report that references higher profile lawsuits, particularly those brought by public officials or entities. That monthly session provides an opportunity for Corporation Counsel and the Committee to engage in an enhanced dialogue about lawsuits brought by public officials and/or entities. Those discussions could include the status of the case, legal fees incurred to date, the likelihood of success on the merits, and potential liability exposure or other impacts (closed session likely required).

Respectfully submitted,

/s/ Colleen Foley
Deputy Corporation Counsel