



OFFICE OF CORPORATION COUNSEL

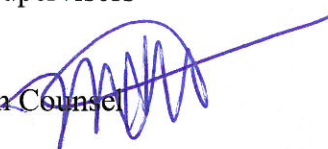
MEMORANDUM

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TO: Milwaukee County Board of Supervisors
Interested Parties

FROM: Margaret C. Daun, Corporation Counsel 

DATE: December 29, 2017

RE: Diversity Commitment of the OCC and Diversity Reporting for Outside Counsel

Over the course of 2017, the County Executive, various County Board committees, and numerous Supervisors and other interested parties have inquired of the Office of Corporation Counsel (OCC) regarding the diversity of outside counsel law firms that are retained by the County. This report builds upon the diversity statistics first shared in the OCC's Budget presentation of October 2017. It relies upon data in the form and manner reported by the responding law firms between approximately May 2017 and September 2017. This data will be updated and reported annually to the Board and County Executive by the OCC.

At the outset, it is important to note that the majority of County dollars expended on outside counsel are controlled by the County's insurer, the Wisconsin County Mutual Insurance Corporation (WCMIC), who has exclusive control over the selection of counsel related to claims and issues covered under the County's policy. If an issue or event is covered by the policy, WCMIC has the right to unilaterally determine what counsel is assigned. As a result, I initially requested of WCMIC, on February 28, various diversity metrics from all insurance panel counsel assigned to County matters. I followed up on that request on March 23.

In response, I received a written correspondence dated April 12, 2017 from Mr. John Dirske, General Administrator of WCMIC, which is marked as **Exhibit 1** to this report. In that letter, Mr. Dirske stated that WCMIC will not provide the diversity data I requested. He continued, "the insurance policy ... makes it completely clear that WCMIC ... is the final decision maker with regards to the assignment of counsel for any case." Mr. Dirske stated further,

There are a number of factors for a firm to be selected and retained on our approved defense counsel list ... includ[ing] geography, type of service and practice areas ..., the ability to provide a certain volume of cases to manage the firm's hourly rate, and most importantly, the constant production of favorable results and our insured's satisfaction with the litigation services provided.

We have never asked for a diversity metric to be completed by a firm nor have we tracked this information.

...

Those [files and cases] that are not [handled by the OCC] are usually sent to outside firms for very specific reasons. The typical factors driving this decision include the size and complexity of the litigation, the experience of an outside firm in handling a prior matter with a particular claimant or question of law, or as a result of a conflict of interest arising from your office.

Mr. Dirske stated that “WCMIC understands and supports Milwaukee County’s desire to utilize [diverse firms] for professional services, *when the County is directly contracting with those entities.*” (Emphasis added.) Earlier, he pointed out that “there are no direct contracts between Milwaukee County and [insurance] defense counsel assigned [by WCMIC] to defend a covered matter.”

Mr. Dirske concluded, “[WCMIC’s] approved panel includes Emile Banks and associates and [used to include] Gonzalez, Saggio & Harlan.” According to Mr. Dirske, WCMIC’s approved panel counsel includes exactly *one* diverse firm, who, to the best of my knowledge, has never been assigned by WCMIC as sole or lead counsel on any matter and thus receives only a small fraction (less than 5%) of the fees paid out under the County’s WCMIC policy. Moreover, I understand that WCMIC has denied repeated requests that the firm that spun off from Gonzalez, Saggio & Harlan (MWH Law Group, LLP), be named panel counsel.

In sum, in his April 12 letter, Mr. Dirske, the General Administrator of WCMIC,¹ advised me that diversity issues were not a concern of WCMIC, not a relevant factor in WCMIC’s selection of law firms as panel counsel, nor a relevant factor in WCMIC’s assignment of firms to specific County legal matters and that as a result, WCMIC would not collect, report, nor consider diversity information related to County legal matters.

After being counseled by County Risk Manager Pechacek that his response was likely to be viewed as insufficient, Mr. Dirske apologized and retracted his April 12 letter and sent a substitute letter to me via electronic email dated April 13, attached hereto as Exhibit 2.

The substitute letter is of no moment – the content of the communications is nearly identical. The only change between the two communications was that Mr. Dirske agreed in the April 13 letter to

¹ Of the 16 voting Directors of WCMIC, only one is female and only one is a person of color. Also of note, Aegis Corporation “serves as the County Mutual’s general administrator...[and] provides services [to WCMIC] in four areas: general administration, claims and litigation management; loss prevention; and marketing,” according to WCMIC’s website. See <http://www.wisconsincountymutual.org/board-of-directors.html> (Dec. 28, 2017). Aegis’s staff, according to its website, is comprised of 42 individuals, none of whom is a person of color. See <http://www.aegis-corporation.com/our-team.html> (Dec. 28, 2017.)

provide the requested diversity data, albeit with an extended timetable. In response, I agreed to extend the deadline to May 5.

The diversity information provided by WCMIC is attached as **Exhibit 3**. Note that the information was not submitted until May 30. Further complicating matters, the information was sent as a pdf, not in an excel file, nor was the content or format of the information uniform. Thus, the information provided by WCMIC was unusable to the OCC.

In response, given all the foregoing, instead of relying upon WCMIC to attempt to collect the data, which I deemed unlikely to produce satisfactory information, my office undertook a painstaking process of corresponding with each individual firm directly to request the necessary data from each of the eight panel counsel firms² identified by WCMIC as either currently assigned to or likely to be assigned to County work. This required multiple communications and back-and-forths to refine the firm's responses to ensure comparability and uniformity across responses.

Furthermore, my office also undertook to also collect diversity data from firms unrelated the County's policy with WCMIC, including Reinhart, Boerner, Van Dueren, s.c., which has averaged over \$1 million per year in legal billings over the past five years related exclusively to services provided to the County's pension fund, as well as Winston & Strawn LLP, Quarles & Brady LLP, and Duane Morris LLP, each of which were retained in 2017 to assist with highly specialized matters.

Attached as **Exhibit 4** to this memorandum is a PowerPoint presentation that includes the relevant diversity metrics for each law firm contracted by the County in 2017, as disclosed to the OCC. Any department which did not put a contract for legal services through DocuSign may not be included in this analysis.

² Those 8 firms include (1) Husch Blackwell; (2) Crivello Carlson, s.c.; (3) von Briesen & Roper, s.c.; (4) Emile Banks & Associates, LLC; (5) Mallery & Zimmerman, s.c.; (6) Grady, Hayes & Nearly LLC; (7) Leib Knott Gaynor LLC; (8) Linder & Marsak.