Office of County Counsel
2010 Business Plan

PREPARED BY THE
OFFICE OF

COUNTY COUNSEL
COUNTY OF ORANGE

333 WEST SANTA ANA BOULEVARD, SUITE 407
MAILING ADDRESS: P.O. BOX 1379
SANTA ANA, CA 92702-1379

NICHOLAS S. CHRISOS
COUNTY COUNSEL

MISSION OF THE COUNTY COUNSEL:

TO PROVIDE THE HIGHEST QUALITY LEGAL ADVICE AND REPRESENTATION TO THE BOARD OF SUPERVISORS, ELECTED AND APPOINTED DEPARTMENT HEADS, COUNTY AGENCIES/DEPARTMENTS AND STAFF, AND BOARD-GOVERNED SPECIAL DISTRICTS.

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EXECUTIVE SUMMARY

The Office of County Counsel is charged with providing civil legal services to County government, e.g., defending and prosecuting litigation, advising the Board of Supervisors, and providing written opinions to County and district officers on matters pertaining to their duties. The Office of County Counsel, as provided by the Government Code, was created on September 16, 1941, by Ordinance No. 432. Most of the Office of County Counsel's functions are defined and mandated by California statutes, County ordinances, Board resolutions, Board policy and case law.

The organization and staffing of the Office of County Counsel, as planned and implemented historically, have until recently been effective in carrying out the office's mission and objectives in a timely way. However, due to retirements and other departures of attorneys and staff during the past two fiscal years, coupled with a County-wide hiring freeze imposed during that time, and loss of vacant positions during the County budget process, the office has been compelled on a few occasions during the past year to decline or defer certain services because adequate County Counsel staffing has simply been unavailable.

During the past four fiscal years, despite a steadily increasing volume of work in nearly every area of County Counsel practice – from Child Protection to Mental Health/Probate to Human Resources to Litigation to Advisory Services – the office's staffing levels have remained effectively flat (see table below) and are now below 2006 levels in terms of attorney staffing. This is shown by the following table, which also reflects the projected staffing reduction described in the 2010-2011 Strategic Financial Plan due to projections by the CEO-Budget office of proposed cuts to the office budget:

Positions	July 1, 2006	July 1, 2007	July 1, 2008	July 1, 2009	July 1, 2010 (Projected)
Attorneys	66	69	69	65	62
Support Staff	35	35	36	36	34
Total	101	104	105	101	96

With these forecasts of significant budget cuts and resulting workforce reductions, coupled with ongoing increases in County demands for legal services (resulting in part from the budget crisis itself), additional reductions in the scope of the office's services may be unavoidable, particularly since such budget cuts will likely necessitate workforce reductions through voluntary or mandatory furloughs or through layoffs. If such reductions of County Counsel services occur, the County departments or agencies that have previously relied on County Counsel to provide all litigation and advisory services will, in certain instances, either (a) have to retain the legal services of outside counsel – at significantly greater cost to the County's General Fund (or to the dedicated funding sources of the particular agencies), or (b) risk proceeding without legal services and advice and thus potentially exposing the County to inefficiencies, higher costs of doing business, and liability for damages. Such increased costs and potential liabilities would almost certainly exceed any savings achieved through the proposed cuts to County Counsel's budget.

Subject to such significant, ongoing budgetary reductions that result in loss of sufficient staffing to perform certain previously-provided services and functions, the Office of County Counsel will strive to provide all essential services, to allocate its limited resources to ensure that the office's most vital functions are performed, and to do everything it can to perform the following core functions:

- Address the increasing breadth and depth of legal services required by the Board of Supervisors, the County Executive Officer, and County agencies and departments

- Provide expert litigation services in ever more complex and costly lawsuits filed against the County and other Board-governed entities and departments

- Advise the Board and all County agencies and departments as to state and federal Constitutional, statutory and regulatory requirements impacting County operations

- Draft or review and, as necessary, revise all significant County contracts, and construction and real property documentation to ensure conformance with applicable laws and County policy.

LAW PRACTICE TRENDS

In the past decade there has been a shift in the skill mix required in the practice of law. Highly specialized professionals have replaced the generalist lawyer. Attorneys in the Office of County Counsel have always been specialists in public law. In recent years, the Office of County Counsel advisory and litigation attorneys have followed the general trend towards specialization in substantive areas of practice. Developing and maintaining this high level of legal expertise presents a continuing challenge for the Office of County Counsel.

Advisory attorneys typically provide highly specialized legal services to elected officials, major departments such as the Social Services Agency, the Health Care Agency, Sheriff-Coroner, Probation, OC Public Works, John Wayne Airport, and the CEO, as well as smaller departments. General litigation attorneys are focusing their practice on subjects identified with specific departments, including the Treasurer-Tax Collector, the Assessor, the Orange County Flood Control District, OC Public Works, and CEO-Human Resources. Attorneys working in the Child Protection and Mental Health/Probate Sections are likewise engaged in highly specialized areas of the law and are physically located in two outlying locations. Moreover, the Office of County Counsel attorneys are being called upon increasingly not only to provide general legal advice and representation, but also to become more involved in transactional services and client training.

Specialization is essential to providing timely, comprehensive legal services, and minimizing the cost of retaining outside counsel. However, with the advantages of specialization come organizational challenges, such as: 1) ensuring that there is sufficient ongoing legal training to minimize the disruption to client services related to changing client needs, attorney vacancies and assignment changes; and 2) maintaining a corporate perspective among attorneys working at different locations. The Office of County Counsel uses a staffing model that has in the past always met the clients' needs for highly specialized legal services and that will continue to meet those needs unless lack of sufficient staff requires cutting back some services.

Section I: Agency Overview

VISION STATEMENT

To provide reliable, consistent, defensible, ethical, thoughtful and credible legal advice and representation to our clients.

MISSION STATEMENT

The mission of County Counsel is to provide the highest quality legal advice and representation to the Board of Supervisors, elected and appointed department heads, County agencies/departments and staff, and Board-governed special districts.

CORE SERVICES

The Office of County Counsel acts as "in-house" counsel. All County agencies and departments receive the Office of County Counsel's services. However, our primary client is the Board of Supervisors. With the exception of core functions of elected officers, services are rendered to other County officers and employees because of their status as agents of the Board. The Office of County Counsel also provides legal services to some independent local public entities such as the Grand Jury and the Airport Land Use Commission.

The principal values provided by the Office of County Counsel are the reliability and consistency brought to the actions of County government. By interpreting the law for client officers and agencies, the Office of County Counsel enables them to reach their objectives in accordance with state and federal law, thereby avoiding, to the extent possible, challenge and confusion. When County actions are challenged in court, the Office of County Counsel defends the County against litigation. The Office of County Counsel may also be directed to bring lawsuits to effectuate the objectives of the County.

The scope of the Office of County Counsel's practice is extremely broad. From the airport to zoning, there is not a single important issue of law or public policy facing the County of Orange that does not receive some level of scrutiny by County Counsel. Advice is rendered on matters of great importance to the operation of County government in areas relating to labor and employment issues, law enforcement, purchasing contracts, real estate transactions, public works projects, child protection and child abuse issues, adult and family services, and mental health and probate conservatorship matters, as well as on matters of broad interest to public officials and to the public at large, including issues regarding public records, public meeting laws, and ethics in government.

The Office of County Counsel is dedicated to the principle that thoughtful, credible and ethical legal services lead to fewer lawsuits, lower liability costs, better services and better County government. As members of the County community, the attorneys and staff of the Office of County Counsel are proud of the office's work as the County's lawyer.

Section II: Operational Plan

A. ENVIRONMENT

CLIENTS

The Office of County Counsel renders legal services to the Board of Supervisors as the ultimate client, and to all County departments and agencies. In addition, the Office of County Counsel provides services to the Grand Jury, the Airport Land Use Commission, and various advisory and oversight committees governed by the Board of Supervisors. County Counsel provides advice and representation to client agencies and departments that deal with and serve the public, but the Office of County Counsel does not provide legal services directly to members of the public.

Indirect Beneficiaries:

The areas of Child Protection and Probate/Mental Health have grown to constitute approximately 40 percent of the office's staffing and workload. These aspects of the office's practice provide needed services and indirect benefits to a sector of the County's population with specialized needs. Many of the issues that arise in these practice areas have significant ramifications on individuals' lives and typically include issues of abuse, disability, mental health, and death.

In its Child Protection practice before the Juvenile Court, the Office of County Counsel represents the Social Services Agency in a variety of dependency hearings, including hearings to determine whether a legal guardian should be appointed, or whether children should be freed for adoption.

In the area of Probate/Mental Health, the Office of County Counsel represents the Public Administrator/ Public Guardian (PA/PG) in court and as advisory counsel. The individuals served by the PA/PG are among the most vulnerable in the community for whom no other alternative is feasible. These include the mentally ill who might endanger themselves or the community, the elderly and frail who are subject to exploitation, and the heirs of decedents' estates who might otherwise see their inheritances mismanaged.

CHALLENGES

The Office of County Counsel faces significant challenges in maintaining the depth and breadth of expertise and staffing necessary to respond to the fluctuating demands of clients and the unfolding of economic and political events, particularly in light of the budget cuts, loss of positions and other circumstances described in the Executive Summary, above.

1. **LIMITED AREAS OF OPPORTUNITY FOR REDUCING OPERATING COSTS:** Although 92% of the office budget is for salaries and employee benefits, and largely out of County Counsel's control, the office aggressively seeks opportunities for savings, the majority of which are small and pertain to expenditures for services and supplies. The Office of County Counsel is committed to maintaining an environment where employees are encouraged to identify cost savings and efficiencies.

2. **REALIZATION OF ESTIMATED REVENUE AND COST APPLICATION:** Billings for legal services generate revenue that represents approximately 49% of the appropriations budget. The Office of County Counsel uses a daily timekeeping system that captures attorney time in 15-minute increments in order to realize all cost apply/revenue that is appropriate, and continually seeks cost recovery opportunities whenever feasible. It should be noted that County Counsel's billable recovery percentage is decreasing because we are unable to fully bill for essential services provided to some of our clients whose funding sources are declining (e.g., Social Services and Sheriff-Coroner). As a result, these departments' funding commitments to County Counsel are covering a smaller percentage of services that must be provided to those departments.[1/]

3. **PROBABLE NEED TO ESTABLISH NEW PRIORITIES IN PROVIDING SERVICES:** County Counsel's workload is driven by client demand, by ongoing legislative and regulatory changes, and by unpredictable variations in the number and complexity of cases filed against the County and its departments and officers. The Office of County Counsel is experiencing increased workloads in every area of its practice. As a result of the widespread State fiscal crisis affecting all California counties, the office has experienced a huge increase in the services required to handle Social Services advisory and litigation matters and employment law and human resources (HR) issues. As described below, greater demands are now being placed on County Counsel for assistance in labor negotiations, employment litigation, grievance proceedings, arbitrations, Fair Labor Standards Act matters and employee/retiree benefits matters. As a result, the office now dedicates the services of five full time attorneys to Human Resources issues.

The single greatest challenge that will face the Office of County Counsel during the coming fiscal years will be the need to make exceedingly tough choices in prioritizing and cutting its own service levels in the face of projected budget cuts. If budget cuts

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1 In fiscal year 2008-2009, SSA's funding to County Counsel fell $1.34 million short of covering all services rendered for SSA, calculated according to the approved charge rates paid by County departments to County Counsel. Similarly, the Sheriff paid for only 36 percent of County Counsel's services, leaving County Counsel to look solely to the General Fund for coverage of over 1 million dollars' worth of services rendered to the Sheriff.

projected in the Strategic Financial Plan for 2010-2011 become a reality, County Counsel will likely have to lay off or eliminate through furloughs the salary equivalent of between three and six attorneys. Unlike other County departments and agencies, which perform services directly for members of the public, the Office of County Counsel serves the County, its Board of Supervisors, and County agencies and departments. Consequently, any workforce reductions within County Counsel will mean a reduction of services received by other County departments. Setting aside vacations and other time off that those attorneys would take, a reduction of three to six attorneys will mean that the office will have to cut services to County departments by somewhere between 5,000 and 10,000 productive hours. But cutting services to client departments that have dedicated funding sources and which provide revenue to County Counsel would not be feasible, since any reduction in such services would simply reduce County Counsel's revenues and, in turn, require additional workforce reductions. Thus, the projected 5,000 to10,000 hour reduction in legal services necessarily will impact County Counsel's so-called "General Fund" clients such as:

Assessor
Treasurer-Tax Collector
Registrar of Voters
Human Resources (CEO-HR and departmental HR staff)
Auditor-Controller
Planning and Code Enforcement
District Attorney
Public Defender
Sheriff-Coroner (which in fiscal year 2008-2009 funded only 36% of County Counsel's services that it receives, leaving a shortfall of over $1 million not covered by any funding by Sheriff to County Counsel)
Social Services Agency (more than $1.3 million in services not covered by SSA funding)

Those departments cannot forego 5,000 to 10,000 hours of legal services without sustaining significant costs, risks or liabilities. They would have to turn to outside counsel for assistance to avoid such exposure. Whether compared to the cost of outside counsel or the increased internal costs of doing business and increased liabilities that will result from not having the benefit of such County Counsel services, the savings to be achieved through the proposed budget cuts to County Counsel would be far exceeded and outweighed by the negative results of such cuts. Such an across-the-board budget cut – if applied to County Counsel – would ultimately prove to be penny-wise and pound foolish.

The following section of this Business Plan highlights the challenges to be faced by the Office of County Counsel in eliminating General Fund services if the budget cuts now projected become a reality. These examples of services rendered by the Office of County Counsel to General Fund clients during fiscal year 2008-2009 illustrate the effectiveness and value of County Counsel to the County and its General Fund departments, and provide clear examples of the sort of savings and benefits that the County may lose if budget cuts to County Counsel result in a reduction of such services.

It should also be kept in mind that these are just a few examples of the work that County Counsel deputies perform year in and year out, to the great benefit of County departments and agencies. And it must also be noted that one key area of County Counsel's practice – providing ongoing advice on a day-to-day basis to all County departments in order to ensure that the County complies with the law and avoids the risk of liability – is not adequately covered by these few examples. The savings to the County that result from County Counsel's preventive law practice (advisory and transactional services) are undoubtedly very significant, but difficult to quantify because excellent legal advice and representation prevents liabilities from occurring. But because the legal issues that County Counsel handles and the advice that County Counsel gives routinely relate to critical issues of County operations, any reductions in County Counsel's advisory and transactional workforce will undoubtedly result in increased costs and risks of liabilities to the County that would exceed the benefits achieved through cuts to the office's budget.

While a full reading of the detailed discussion of the examples below is important to a better understanding of the value of County Counsel's services and of the impact of having to reduce services, the following table alone provides noteworthy illustrative examples:

Client	**Subject**	**Nature of Service**	**Benefit or Savings Achieved**
SSA	Blackstar Federal Class Action	2300 hours + devoted to date to defend SSA against federal class action	More than $750,000 saved in outside counsel fees
CEO-HR	Labor and Employment Issues	Five attorneys devoted full time to providing advice, litigation services, arbitration and grievance services, and labor negotiation services.	Perform services that would cost the County more than $3 million each year in outside counsel fees; avoidance of untold liabilities
Registrar of Voters	Compliance with requirements for use of Direct Recording Electronic Voting System	Advised Registrar as to compliance with law, to allow use of DRE machines in 11/08 election	Facilitated Registrar's use of DREs, thus preserving the utility and timeliness of a huge capital expenditure
Auditor-Controller	Property Tax Administration Fee Interpretation and Collection	Rendered opinion as to additional costs that may be collected from cities through the PTAF; negotiated tolling agreements with cities	Facilitated receipt of over $1 million in additional revenues each year; avoided significant and potentially needless litigation expense through tolling agreements
Assessor	Complex Property Tax Litigation	Represent Assessor through AAB, trial court and appellate court proceedings on complex property tax	More than $1 million saved in outside counsel fees; Assessor's position on key assessment issues vindicated in most cases (with significant and positive revenue

		challenges	impacts)
OC Public Works	Construction litigation	Act as sole counsel or co-counsel in complex construction cases	Hundreds of thousands of dollars saved in outside counsel fees each year
County	Bail Bond exoneration motions	Represent County in opposing bail bond exoneration motions/challenges to bail forfeiture	Hundreds of thousands of dollars recovered each year in bail forfeitures over bail bond company objections; hundreds of thousands of dollars in outside counsel fees saved each year
Tax Collector	Pursuit of property tax collections/lien enforcement	Appear in bankruptcy courts across the country challenging objections to County tax liens	Hundreds of thousands of dollars collected and/or saved in outside counsel fees each year

a. County Counsel Has Saved the County at least $750,000 in Attorney's Fees in the *Blackstar v. County of Orange/Social Services Agency* Federal Class Action

On January 23, 2009, a federal class action lawsuit was filed against the members of the Board of Supervisors, SSA, and the Director of SSA by the Western Center on Law & Poverty (joined by three other law firms as its co-counsel, including O'Melveny & Myers), on behalf of four named class representatives who were alleged to be applicants and recipients of Food Stamps, Medi-Cal, and General Relief. The action was apparently prompted by labor's reaction to layoffs of SSA personnel. The Class action allegations claim that those layoffs caused or exacerbated SSA's failure to meet statutory guidelines that require the timely processing of public assistance applications within stated periods of time. The named class plaintiffs are allegedly representative of hundreds of class members whose public assistance applications SSA allegedly failed to process in a timely manner.

Plaintiffs are seeking a preliminary and permanent injunction requiring the Board and SSA "to implement procedures as soon as possible to ensure the timely and uninterrupted delivery of Food Stamps, Medi-Cal and General Relief benefits to eligible applicants and recipients as required by state and federal law." Plaintiffs and their counsel (or perhaps one or more labor groups funding the litigation) are pursuing the injunction presumably with the goal in mind of forcing SSA to re-hire employees in order to meet the requirements of the injunction.

A team of four County Counsel attorneys has devoted more than 2300 hours to defending SSA and the Board against this action. Had County Counsel been able to bill and collect revenues for its services at its own internal billing rates, County Counsel would have received approximately $390,000 for its services in the *Blackstar* matter through the end of November 2009. But County Counsel has received no revenue for its services in this matter and depends on General Fund support for such matters. (The fixed amount of funds the County Counsel receives for services to SSA each year is not sufficient even to cover all of County Counsel's other services for SSA in areas such as Child Protection trials and appeals and advisory legal services.)

In contrast, the same number of hours billed by outside counsel would have cost the County somewhere in the neighborhood of $750,000 to $850,000, even applying a conservative assumption of outside counsel billing rates for a matter of this complexity. And because the litigation is ongoing, the County's cost savings due to County Counsel's representation in the case will continue to grow as the weeks and months pass.

In addition, County Counsel has been able to handle this litigation efficiently because County Counsel attorneys are experts in County government law and knowledgeable about County practices. When private counsel is retained in complex matters, there often is an expensive learning curve needed to familiarize the attorneys with the law in the area. Due to the high hourly rates and the need to master the applicable law and facts regarding County departmental practices, outside counsel costs for a complex, class action case such as *Blackstar* would easily have exceeded $1 million.

County Counsel's team devoted to the *Blackstar* case has been diligent in developing the County's defense in the case. Plaintiffs' counsel filed motions for class certification and injunctive relief in July and August. But County Counsel has mounted a vigorous defense to those motions and has raised sufficient doubts in the Court's mind that the Court has delayed any ruling on either class certification or injunctive relief for the past several months. While the Court has urged the parties to find a basis for settling the case, the Court has not ruled against the County, despite the undeniable fact that some applications for entitlements are being processed later than statutory limits allow (although SSA is doing the best it can in the circumstances of its own budget problems).

If projected budget cuts in 2010-2011 are imposed, County Counsel will likely not be in a position to handle major litigation such as the *Blackstar* case. If so, in one such case alone, the County could incur outside counsel costs exceeding the savings to be achieved through cuts to County Counsel's budget.

b. County Counsel Relies on Its General Fund Allocation to Provide Extensive, Specialized Human Resources Services to CEO-HR and to County Departmental HR Staff, Thereby Preventing Significant Liabilities and Saving Hundreds of Thousands of Dollars in Outside Counsel Fees.

County Counsel's services in the area of labor and employment law encompass a full spectrum of employment related legal issues and cover all phases of representation from investigations to mediation, arbitration, administrative hearings and related litigation. During the past two years, because of the nearly unprecedented budgetary constraints facing the County, the office's role in advising and assisting CEO-HR and departmental human resources staff in labor matters has greatly expanded. County Counsel's services have also become even more indispensable in counseling HR staff as to proper handling of workforce reductions arising from budget cuts. County Counsel provides advice regarding labor negotiations with affected labor groups involving the subjects of furloughs, layoffs, scheduling, reassignments, and facility closures. County Counsel also continues to advise CEO-HR and departmental HR staff on how to limit exposure to possible unfair practice claims during this period of strained labor relations by drafting and reviewing employer communications to the general workforce, by advising departments as to which matters require negotiation or meet and confer procedures and which measures may be implemented without negotiation.

On other issues of employment law, County Counsel provides advice and representation pertaining to claims of discrimination, disability accommodation, wrongful termination, harassment, privacy, retaliation, due process, discipline, and wage and hour disputes. During recent months, the office has provided extensive advice in connection with the County's H1N1 Joint Task Force in development of policies and strategies for responding to the Swine Flu pandemic as it affects employees in Orange County.

County Counsel handles the vast majority of the County's employee discharge and employment contract interpretation arbitrations. The 2008-2009 fiscal year, as might be expected, saw an unusually high volume of such arbitrations, which is a trend that is continuing through the next fiscal year. Every employee discharge requires review by County Counsel of all supporting documentation, consultation with departments and central HR and, in many cases, arbitration to test the propriety of the discharge. As a result of County Counsel's arbitration services, the County has avoided significant but unquantifiable sums in potential back pay and fee awards.

County Counsel was also instrumental in engaging the Meyers Nave law firm for its specialized expertise on the Fair Labor Standards Act ("FLSA"), which was required for a mandated FLSA audit of all County departments. County Counsel's assistance resulted in savings to the County in at least two ways. First, County Counsel negotiated the contract with Meyers Nave so that the firm agreed to perform all required services for a flat fee of $150,000 (the cost of which was also borne by County Counsel's budget). Second, County Counsel worked closely with Meyers Nave and provided hands-on assistance with the audit process. The County Counsel attorney met with every County department personally to gather information regarding each department's internal FLSA practices. She then spent countless hours preparing memoranda regarding each department's practices, identifying the issues raised in those meetings, for review by outside counsel. She also oversaw the progress of the audit, seeking clarification and additional information when needed and facilitating meetings with County executive management including County HR Director, the CEO, and the Board of Supervisors.

County Counsel also advises CEO-HR on all issues that arise regarding employee benefits. County Counsel devotes the services of one attorney on a full-time basis to this exceedingly complex area of law and practice. Thus, County Counsel's HR division, through the five attorneys assigned to that practice area, provides services each year that are roughly the equivalent of 8,500 to 9,000 hours of productive time – services that would cost the County as much as $3 million each year or more if such specialized services were provided by outside firms even at a conservatively assumed billing rate.

c. Prompt, Effective Representation By County Counsel Preserved the Registrar of Voters' Ability to Use Its "Direct

Recording Electronic Voting System" ("DRE") During the November 2008 Election, Avoiding the Sort of Significant Expenses Incurred by Other Counties Who Were Unable to Qualify For Use of DREs They Had Purchased

On October 28, 2008, less than a week before the November election, the California Secretary of State issued emergency regulations requiring voting officials to conduct a Post-Election Manual Tally (PEMT) of election results that were recorded or tabulated by a voting system. These emergency regulations followed an effort by the Secretary of State to review, and issue standards regarding the use of, voting systems in the year preceding the November 2008 election.

Leading up that that, County Counsel had been advising the Registrar of Voters in connection with the Secretary of State's Top-To-Bottom review of county voting systems, which began in mid-2007. In connection with this review, County Counsel stayed in frequent contact with attorneys representing other counties to identify issues raised by the Secretary of State's review. Following this review, Orange County was one of the few counties whose Direct Recording Electronic ("DRE") voting system was certified to be used at County polling sites. Several other counties were unable to use DRE voting systems that they had purchased, which the Secretary of State had decertified following its review. In the months leading to the November 2008 election, County Counsel monitored litigation by other counties challenging the PEMT requirements that the Secretary of State had imposed throughout the State. County Counsel advised the Registrar of Voters in connection with an August 31, 2008 decision that had invalidated these requirements on procedural grounds, and then advised the Registrar of Voters in connection with the Secretary of State's subsequent emergency regulations, which essentially re-issued these requirements.

As part of this process, County Counsel actively worked with the Registrar of Voters to try to identify legal issues that might arise during the November 2008 election, as well as develop potential responses to such issues. County Counsel was not paid for its services on this project apart from its General Fund allocation. And it is precisely this sort of General Fund-dependent service that County Counsel may be rendered unable to perform if subjected to the need to cut 5,000 to 10,000 hours of attorney time. In that case, the Registrar will either have to incur significant costs in retaining outside counsel or be faced with higher costs of doing business.

d. County Counsel Advice Regarding The Proper Calculation Of Property Tax Administration Fees Resulted in Additional Revenues of Over $1 Million Annually

Under Revenue & Taxation Code Section 95.3, the County is permitted to charge cities throughout the County with a Property Tax Administrative Fee ("PTAF") for property tax services performed by the County. The starting point for the calculation of each city's share of the PTAF is the amount of property tax revenue allocated to each city. The more property tax revenue a city receives, the greater its allocation of PTAF. The PTAF amounts charged by the County do not exceed the actual and reasonable costs incurred by the County in performing property tax allocation services.

In 1994, the Legislature passed Senate Bill 1096 (SB 1096), which implemented two transactions known as the Triple Flip and VLF swap. These transactions increased the proportion of property tax revenue allocated to cities. During this past fiscal year, County Counsel analyzed the law and prepared an opinion advising the County Auditor-Controller that the County is entitled to include the Triple Flip and VLF swap property tax revenues in the calculation of the PTAF which the County may recover from the cities who receive those revenues. The Auditor-Controller included Triple Flip and VLF swap property tax revenues in the calculation of the PTAF. As a result, the County is able to recoup a larger share (amounting to more than $1 million annually) of its property tax apportionment costs.

Cities throughout the County then filed claims against the County regarding the County's increased collection of PTAF. The cities argued that the County should not include Triple Flip and VLF swap property tax revenues when calculating PTAF even though the PTAF amounts still did not exceed the costs incurred by the County in allocating property taxes.

County Counsel negotiated tolling agreements with the cities to avoid incurring significant litigation costs pending the outcome of a similar case involving the same issues that Los Angeles County was litigating with cities in that county. During the tolling period, the County is continuing to collect PTAF from the cities at the increased level. On June 3, 2009, the trial court referee in the Los Angeles case reached a decision and rejected the cities' claims against L.A. County. The judge found that Los Angeles County's methodology for calculating PTAF, which is similar to the methodology followed by Orange County, complied with the law.

Thus, County Counsel's involvement has to date avoided tens of thousands of dollars in potentially needless litigation costs while also preserving the County's annual receipt of over $1 million in additional PTAF revenues for as long as the tolling agreements remain in effect

e. Representation of the County and the Assessor by County Counsel in Complex Property Tax Cases Concluded During the Past Fiscal Year Saved the County At Least $1 Million Dollars in Attorney's Fees.

In 2002, the County learned through the case of *Bezaire v. County of Orange* (aka the 2% case), among other examples, that it is extremely expensive to have outside counsel represent County agencies in complex property tax cases. Since that time, County Counsel has continued to develop a specialty in property tax matters and has handled all of the complex property tax cases that have been filed against the County including, among others, *Jon's Fish Market v. County of Orange, Cardinal Health 301 v. County of Orange and Phelps Trust v. County of Orange and Orange County Assessor.*

Those three cases, which stand as clear examples of the value to the County of a fully staffed Office of County Counsel, were litigated to finality during the past fiscal year. Each of those cases was litigated by County Counsel before the Assessment Appeals

Board, the Superior Court, the Court of Appeal and, to a limited extent, the California Supreme Court.[2] Representation in these cases consumed hundreds of hours of attorney time. Had those cases been handled by outside counsel, the County Assessor's office would have incurred legal fees of at least $1 million dollars. On the other hand, County Counsel receives no revenue for its work on these cases and must rely on General Fund allocations to cover its staff and costs for providing such services.

The County Counsel tax deputies assigned to these matters are knowledgeable not only in property tax law but in government law as well and thus spend their time efficiently on trial preparation. Moreover, County Counsel is familiar with all the necessary players in the various departments and thus has the inside track in knowing where the information needed to defend the County can best be obtained.

In addition to these litigation cases in which extraordinary amounts of time and effort were involved, County Counsel is invaluable in preventing cases from getting to this level in the first instance. County Counsel is diligent in advising its property tax clients, including the elected department head, so as to avoid unnecessary exposure to claims against the County.

If budget cuts require County Counsel to implement workforce reductions, it may result not only in the inability of the office to handle complex tax matters but will likely diminish our ability to provide such proactive advice to the client departments.

f. County Counsel's Expertise in Defending Construction Lawsuits on Behalf of General Fund Departments Saves the County Significant Expense in Legal Fees.

Due to the sheer volume of documents and complexity of issues involved in construction disputes on public works projects, most public law offices are not equipped to handle such litigation in-house, and many public agencies typically send construction litigation directly to outside counsel. Our office is unusual in that we have litigators with experience in construction litigation able to handle some construction cases from inception through trial if they do not require teams of attorneys and paralegals that are often required to cope with the extensive discovery and document management requirements of larger cases.

In recent years, our office has taken on a number of cases without involving outside counsel, such as *Pinner Construction v. County* (sued by general contractor for extra work), *County v. SFM Constructors* (County filed suit against general contractor for defective work), *County v. Ralph Allen Partners* (County sued architect for defective plans and specifications), and *Zusser v. County* (suit filed against County for extra unpaid work). In each of those matters that have been concluded, favorable settlements were reached and approved by the Board. And because our office was able to handle the cases without outside counsel, the County has saved tens or perhaps even hundreds of thousands of dollars each year in legal fees.

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2 The Phelps Trust matter is still pending before the California Supreme Court

There are also larger cases where it is necessary to bring in outside counsel to handle document management and to assist with extensive deposition and discovery tasks and trials that might take a number of weeks to complete. Although County Counsel has expertise in this area, the limited number of County Counsel attorneys assigned to handle all aspects of litigation means that the office cannot generally afford to devote the services of any single attorney to one case on a full-time or long-term basis. And the Office of County Counsel has no paralegal staffing to handle major document management projects. But even then, in many cases, County Counsel remains on as co-counsel and is able to handle many day-to-day tasks that would be much more expensive to have the outside firm's attorneys handle.

Just one example of such a case was *H.A. Nichols v. County of Orange, Social Services Agency, et al.,* a contractor brought suit against the County for extra work, delay damages, and prompt pay claims/penalties. The case involved a host of complex issues regarding construction delays and physical site conditions. The volume of documents and extensive discovery required in the case meant that the County turned to outside construction litigation counsel. However, since the SSA project to which the litigation pertained did not have any dedicated funding source for the costs of outside counsel, our office remained actively involved in the case. County Counsel drafted and responded to discovery, attended meetings with clients and experts, and assisted with preparation for and attendance at mediation. County Counsel received no revenues or fees from SSA for its services; whereas, had outside counsel alone handled the entire case, the fees paid by the County and SSA to outside counsel would most have been tens of thousands of dollars higher than what was actually paid.

g. County Counsel's Defense of the County Against Bail Bond Exoneration Motions and Pursuit of Bail Forfeitures Yields Hundreds of Thousands of Dollars Each Year in Bail Recoveries and Avoids Hundreds of Thousands of Dollars in Legal Fees

County Counsel currently handles the County's defense of motions to vacate bail bond forfeitures and to exonerate bail bonds. Bail bond forfeitures arise in the context of criminal cases when a defendant fails to appear at a required hearing. Although the defense of bail bond exoneration motions might seem to be a natural fit for the District Attorney's office, the Orange County Counsel has been performing these services for a number of years. Due to the volume of these motions for exoneration, County Counsel must dedicate a substantial portion of the time of one attorney to these services – again without any additional revenue beyond the office's General Fund allocation. In addition, two legal secretaries assist with the required notices for summary judgment and with collection of monies on forfeited bail bonds.

Statute and case law govern when a forfeited bail bond can be exonerated. There are many instances in which the statute provides the bail agent and/or surety with automatic exoneration – if the defendant appears in court or in custody within 180 days, or if the defendant is permanently prevented from returning to court due to forcible deportation. Our office identifies motions that are meritorious and does not spend time opposing motions that the County will not win. Instead, our office identifies motions that make unique or untested legal arguments as the basis for exoneration and those that attempt to make new law; in those cases, County Counsel vigorously opposes the motions and defends any resulting appeals.

During the past year, as in prior years, County Counsel has enjoyed great success in opposing motions to vacate forfeitures and in prevailing on appeals when the bail agent or surety seeks to overturn a trial court decision in the County's favor. Since July 2008, County Counsel has successfully collected $513,652.52 in bail forfeitures, overcoming efforts by bail agents and sureties seeking exoneration. County Counsel also monitors payments being made to satisfy judgments on a number of cases that the office successfully litigated since July 2008. The monies collected are distributed according to Penal Code Section 1463, et seq. Generally, portions of these bail recoveries go to the Court, to the County where the arrest took place, and to any cities and or counties involved in the arrest or prosecution of the defendant.

But if budget cuts are made to the extent now projected, Bail Bond services will likely be one area of services that may have to be eliminated. And in that case, either the District Attorney or outside counsel will have to be assigned the task of performing these services. The equivalent cost to the County of hiring an outside attorney to perform these services would likely be in the hundreds of thousands of dollars each year.

h. County Counsel's Services, If Adequately Supported By General Fund Allocations, Enable the County to Enforce Its Rights in Situations Where It Is Not Financially Feasible to Hire Outside Counsel.

i. <u>Protection of County Tax Revenues Through Bankruptcy Cases and Other Litigation Would Not be Feasible Without County Counsel</u>

County Counsel actively pursues outstanding, unpaid property taxes owed to the County in bankruptcy cases and other matters such as quiet title actions and motions to sell property. County Counsel has an established record of success in assisting the Tax Collector in recovering millions of dollars in outstanding property taxes through the years by pursuing claims in bankruptcy courts. In recent years, the number of bankruptcy filings has grown, particularly the number of Chapter 13 bankruptcies. County Counsel has assisted the Tax Collector in obtaining the maximum available recovery, including interest, in Chapter 13 cases and has been successful in obtaining an 18% interest rate in scores of cases over the last couple of years. Although these bankruptcy cases and the taxes owed by the bankruptcy debtors do not typically represent large amounts of tax dollars individually, on a cumulative basis they certainly do. Moreover, the local bankruptcy community is aware that the Tax Collector, with our office's help, will be seeking full payment, including interest, on its claims.

County Counsel is often contacted with short notice to respond to attempts by bankruptcy debtors to avoid their tax obligations, often in jurisdictions outside of California. Outside counsel would likely not be available or willing to operate in this capacity on such short notice and through filing documents to protect the County's interests in far-flung locations. Beyond that, because the County's recovery in each case is usually not significant enough to warrant the cost of outside counsel (an experienced bankruptcy attorney currently charges $325-$700 per hour). If the Office of County Counsel is not fully staffed and able to handle these matters, the County would therefore find it infeasible to pursue recovery in most cases in light of the cost of alternative legal services. In that event, the County and its Tax Collector might have no way of recovering these cumulatively significant amounts through bankruptcy claims and other debt collection proceedings.

ii. *County Counsel Successfully Filed Suit on Behalf of the Sheriff and Recovered Monies Which Otherwise Would Have Gone Uncollected*

Recent examples of County Counsel's provision of valuable services to clients at low cost are two collection cases filed by our office against vendors for breach of contract: *County of Orange v. NicheVision* and *County of Orange v. The Jones Metal Products Co., Inc.* In those cases, two Ohio vendors who contracted with the County to provide certain products to the Sheriff's Department subsequently breached those contracts. To have hired outside counsel to file suit on behalf of the department would not have been cost effective, in light of the fact that the amount at stake in each case was under $200,000. However, County Counsel prepared, filed and pursued the actions – *without any legal expense to the County other than its General Fund allocation to County Counsel* – and was able to negotiate very favorable settlements representing significant recoveries in both cases to the satisfaction of the client.

iii. *County Counsel's Services Allow the County to Enforce its Rights and Principles Where Monetary Recovery is Not the Goal or is Unlikely and Where the Cost of Outside Counsel Would be Prohibitive.*

County Counsel's services are also particularly valuable where the County must enforce its ordinances or its rights based on principle and where the hiring outside counsel would not make financial sense, as illustrated by the following two examples.

County v Chen. The Board of Supervisors authorized County Counsel to initiate litigation against the owners of a single family residence located in Anaheim Hills that is adjacent to the County owned Santiago Oaks Regional Park. A lawsuit was necessary to prevent the Chens from conducting further unauthorized activities on portions of the park, such as illegal grading, construction of unauthorized structures, etc. and from further violating a resource preservation easement held by the County on the property, which is intended to protect native vegetation and Native American artifacts. The case was vigorously contested by the Chens and received media attention. County Counsel handled a trial which lasted approximately two weeks, including a visit to the property with the judge during trial. At the end of the trial, judgment was entered in favor of the County. A permanent injunction was issued against the Chens, prohibiting any further unauthorized activities on the park or the easement and also requiring the Chens to restore the resource preservation easement area. Since outside counsel would have charged many tens of thousands of dollars in fees during the long pendency of the action, pursuing this action would have been infeasible for the County if not for the availability of County Counsel services.

County vs. Bergeman. The Board authorized County Counsel to initiate litigation to obtain an injunction against the conduct of an event billed by promoters in online advertisements as the "Flesh and Fantasy Halloween Ball 2008" ("2008 Ball") at a huge mansion in the Panorama Heights area of unincorporated Orange County. The 2008 Ball was scheduled to occur on Saturday, November 1, 2008. County Counsel learned that the same sort of ball had occurred in 2007 at the same location and entailed a host of illegal activities including distribution (sale) of alcoholic beverages using "raffle tickets," operating a business without a business license, operating an adult entertainment business within 500 feet of a residential area, conducting a gathering of more than 500 people without the required permit, non-compliance with off-street parking requirements, and illegal gambling. After the District Attorney's office declined to bring an action to enjoin the 2008 Ball, the Sheriff's Department asked County Counsel to obtain a restraining order to stop the ball from taking place and to enjoin any future similar commercial activities at that location. County Counsel succeeded on very short notice in obtaining an injunction prohibiting the 2008 Ball and then obtained a final judgment prohibiting any such commercial events in the future.

i. Conclusion

The ability of County Counsel to continue providing the full spectrum of services described above and other similar services to the County's General Fund departments is dependent on receiving adequate General Fund allocations. Moreover, the ongoing and deepening budget crisis has only served to increase the need of such General Fund departments for County Counsel's legal services. These coinciding events will create huge challenges for County Counsel and its clients in terms of prioritizing services to be provided.

RESOURCES

Since attorney services are the Office of County Counsel's "product," our primary resource (and cost) is staff. Ninety-two percent of the Office of County Counsel's financial resources are allocated to salaries and employee benefits. Having sufficient attorney resources to meet our clients' growing need for legal services is and will be our single greatest challenge, particularly if proposed cuts the County Counsel's budget are made in the coming years. The proposed cuts in County Counsel funding are coming at the same time the current economic climate causes County departments and agencies to require more, not less, sound legal advice and representation. As indicated previously, the loss of County Counsel services at this period likely will cost the County more in liability and outside counsel fees any savings from the proposed cuts to County Counsel's budget.

At the present time, the Office of County Counsel employs 65 attorneys, no paralegals, and 36 support staff personnel. A comparison of this staffing level with the staffing levels at the beginning of the past three fiscal years is important, particularly in light dramatically increasing demands for County Counsel services during that same period of time:

Positions	July 1, 2006	July 1, 2007	July 1, 2008	July 1, 2009	July 1, 2010 (Projected)
Attorneys	66	69	69	65	62
Support Staff	35	35	36	36	34
Total	101	104	105	101	96

Despite the increased demands for County Counsel services and the attorney staffing cuts already required to be made, the Net County Cost limit proposed in the 2009 Strategic Financial Plan for FY 2010-11 is reduced by an additional six percent, reducing County Counsel's Net County Cost limit by $536,000 from FY 2009-10.

In order to comply with the CEO-Budget office's projections, the County Counsel's 5-year Strategic Financial Plan projects that 11 attorneys would be eliminated over that time. Such cuts would be devastating to the office's ability to perform essential services for the County. Although some of these attorneys would be lost through retirement at least half of them would likely be very talented young attorneys who are the future of the office and who were hired due to their excellent qualifications. Losing these excellent attorneys who are dedicated to public service would be a serious blow not only to our office but to the County.

B. ACTION PLAN

The following plan of action assumes that the Office of the County Counsel will receive adequate funding to carry out its mission in full, and that the elimination of positions forecast in the Strategic Financial Plan does not become necessary.

STRATEGIC GOALS

GOAL #1: Provide highly competent legal advice to clients on matters related to their public duties and responsibilities in the administration of the public's business, in accordance with high ethical and professional standards.

GOAL #2: Effectively prosecute and defend civil actions in which clients are involved.

GOAL # 3: Deliver all legal services to clients as efficiently and economically as possible.

STRATEGIES TO ACCOMPLISH GOALS

Law is still practiced as it has always been, trained people applying legal principles and professional judgment to specific facts. In the practice of law, people are the principal resource. County Counsel hires only the most qualified, highest-functioning attorneys, a practice made possible because of County Counsel's excellent reputation in the legal community. In addition, the Office of County Counsel maximizes its employees' productivity by (a) providing them with superior training; (b) providing them with advanced technological tools; and (c) maximizing their communications with client agencies.

The Office of County Counsel has adopted an operational model that (1) utilizes quality assurance initiatives designed to assess the quality of the legal services delivered and the anticipated future needs of clients, (2) allows for flexibility in responding to client needs by providing for ad hoc team building, (3) maximizes the available talent pool, and (4) makes work product available and useful to the maximum number of County employees.

Quality Assurance Initiatives: The Office of County Counsel's quality assurance program is designed to accomplish three operational objectives: (1) obtain feedback on how well the Office of County Counsel is meeting client needs; (2) develop methods for the improvement of delivery of services; and (3) obtain data regarding anticipated changes in the service needs of clients.

Client surveys and meetings are conducted on a regularly scheduled basis. Formal evaluation protocols are being used in selected Child Protection appellate cases and for General Litigation, Probate/Mental Health and Dependency Trials. These processes are designed to evaluate and improve the quality of delivery of services and assist clients in developing sound business practices based on past experience.

Regular communication with clients is essential for planning to meet future legal service needs.

Early identification of client needs allows the Office of County Counsel to evaluate the efficacy of developing in-house expertise, move resources, train attorneys, and plan for support staffing versus seeking outside retained counsel. With limited financial resources, early assessment of client needs helps to ensure high quality, effective and economical legal services.

KEY PERFORMANCE MEASURES & REPORTING

Goal #1: Provide highly competent legal advice to clients on matters related to their public duties and responsibilities in the administration of the public's business, in accordance with high ethical and professional standards.

KEY PERFORMANCE MEASURES:

Percentage of clients rating advisory and litigation support as satisfactory or better.
Percentage of written opinions challenged in court or administrative proceedings.
Percentage of challenged written opinions that are upheld.

Goal # 2: Effectively prosecute and defend civil actions in which clients are involved.

KEY PERFORMANCE MEASURES:

Percentage of clients rating advisory and litigation support as satisfactory or better.
Percentage of dependency cases upheld on appeal.
Percentage of mental health cases won or resolved with approval of client.
Percentage of general litigation cases won or resolved with approval of client.

Goal #3: Deliver all legal services to clients as efficiently and economically as possible.

KEY PERFORMANCE MEASURES:

Percentage of clients rating advisory and litigation support as satisfactory or better.

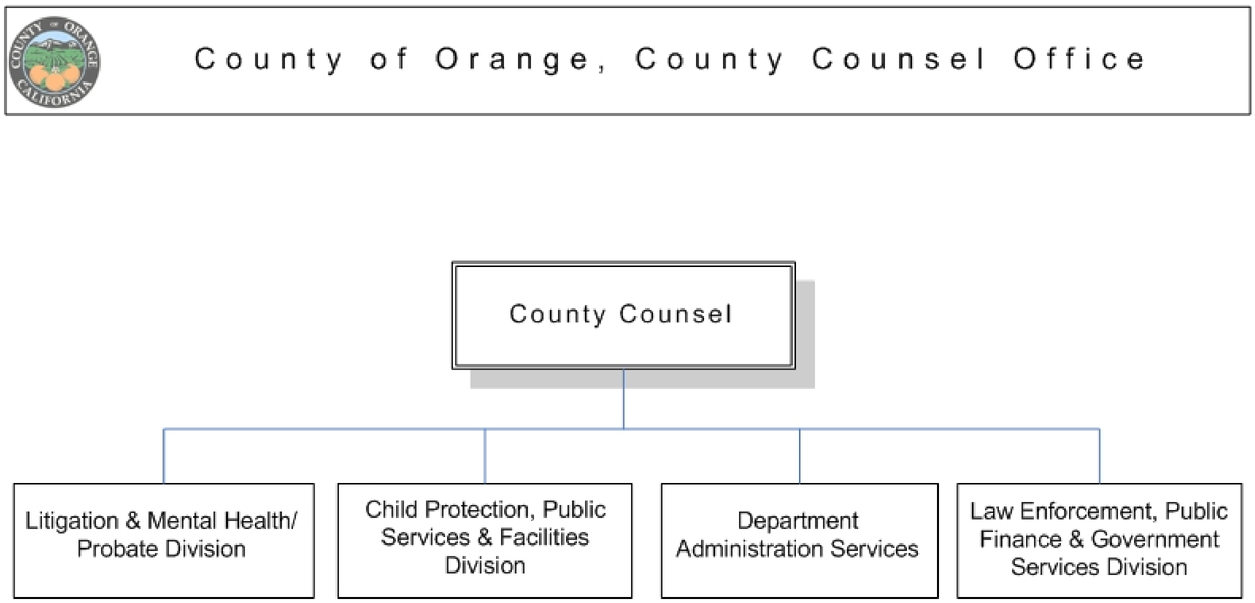
KEY PERFORMANCE REPORTING

PERFORMANCE MEASURE	FY 2008-09 BUSINESS PLAN RESULTS	FY2009-10 BUSINESS PLAN	FY2009-10 ANTICIPATED RESULTS	FY2010-11 BUSINESS PLAN	HOW ARE WE DOING?
Percentage of clients rating Advisory and Litigation Support as satisfactory or better. What**:** Measurement of quality and effectiveness of services provided. Why: Client satisfaction is the primary measure of success for a service agency.	Over 95% of all client responses on specific criteria in 2008 survey rated County Counsel's services as satisfied (85% as "extremely satisfied").	Continue to be rated as satisfactory or better.	County Counsel will be rated as satisfactory or better.	Be rated as satisfactory or better.	Based on survey results and ongoing dialogue with clients, County Counsel's client departments and agencies are very satisfied with the services and support provide by the office.

PERFORMANCE MEASURE	FY 2008-09 BUSINESS PLAN RESULTS	FY2009-10 BUSINESS PLAN	FY2009-10 ANTICIPATED RESULTS	FY2010-11 BUSINESS PLAN	HOW ARE WE DOING?
Percentage of Written Opinions that are upheld. What: Measurement of the quality of legal advice. Why: Provides measure of quality of services provided.	No County Counsel written opinion was challenged requiring judicial review.	Maintain 90% or better rate of success.	County Counsel will maintain a 90% or better rate of success.	Maintain 90% or better rate of success.	County Counsel is producing sound, well-analyzed and accurate legal opinions that withstand (and do not provoke) challenges in court.
Percentage of dependency cases upheld on appeal. What: Measurement of the quality of services provided by County Counsel. Why: Provides measure of quality and effectiveness of services provided.	Over 88% of all appeals were won	The office's goal is to go beyond its already impressive record of success and to attain a 90% or better rate of success.	County Counsel will maintain its high rate of success on these appeals but it cannot yet be projected as to whether the rate of success will exceed the 90 % threshold.	Maintain 90% or better rate of success.	Unlike other areas of litigation, dependency appeals are not typically settled or resolved without a ruling by the Court of Appeal. An 88 percent success rate is an excellent result, despite not quite reaching the 90 percent target.
Percentage of Mental Health cases won or resolved with approval of client. What: Measurement of the quality of services provided by County Counsel. Why: Measure of the quality of services provided by County Counsel.	95% of cases were won or resolved to the client's satisfaction	Maintain 90% or better rate of success.	County Counsel will maintain a 90% or better rate of success.	Maintain 90% or better rate of success.	In this area, the County Counsel's office is exceeding its own ambitious goal by 5 percent. A 95% rate of favorable results is very impressive.
Percentage of General Litigation Cases won or resolved with approval of client. What: Measurement of the quality of services provided by County Counsel. Why: Provides measure of quality and effectiveness of services provided.	Over 96% of all cases handled were won or resolved to the client's satisfaction	Maintain 90% or better rate of success.	County Counsel will maintain a 90% or better rate of success.	Maintain 90% or better rate of success.	The General Litigation Division continues its excellent performance, as shown by a success rate that exceeds 96 percent, well above the office's goal.

Section III: Appendices

APPENDIX A. ORGANIZATION CHART



APPENDIX B. SIGNIFICANT ACCOMPLISHMENTS

In addition to the highly significant accomplishments detailed above in the CHALLENGES section of this Business Plan, during fiscal year 2008-2009 and during the first six months of fiscal year 2009-2010, County Counsel's other noteworthy achievements include the following:

Provided efficient and highly effective litigation services on a wide variety of matters impacting public policy and the County's ability to carry out its mission.

Provided extensive and highly successful litigation services on matters impacting the County's financial and property interests.

Worked with CEO-IT to devise a plan for provision of legal and technical assistance in reviewing and negotiating an upcoming multi-million dollar outsourcing contract for IT and computer data services, which will likely save the County hundreds of thousands of dollars in outside counsel costs compared to the costs incurred in 2000 during the previous round of contract review and negotiation.

Provided ongoing legal consultation on complex or controversial issues with County departments who provide direct services to the public (law enforcement, social services, health care, child support services, and animal control).

Drafted legislation and ordinances in diverse areas and advised clients on implementation of many pieces of new legislation.

Continued to provide support to the Clerk of the Board for an ethics training program, as required by AB 1234, for County elected officials and members of boards, commissions and committees. Participated in hosting or presenting at many County Counsel Association of California continuing education conferences, provided an in-house Mandatory Continuing Legal Education program and the Law Awareness Workshop training modules for County clients.

Regularly and successfully quashed (or convinced other parties to withdraw) subpoenas for confidential records held by various County departments, including the Sheriff, Probation, Social Services Agency and Health Care Agency. Assisted many County departments in responding to subpoenas and requests for records under the Public Records Act, including seeking protective orders as necessary, and successfully defended numerous motions for peace officer records. Provided particular and regular assistance to the Sheriff which receives numerous PRA requests and subpoenas. Proper advice and representation ensure compliance with the PRA and avoidance of recovery of legal fees that would occur if noncompliance is successfully challenged.

In Child Protection, conducted 745 detention hearings, conducted 750 permanency hearings, conducted 48 client trainings, and appeared and advocated at all dependency hearings for all 3300 dependent children. In Child Protection appeals, prevailed in 126 out of 143 appeals based on opinions issued by the appellate court between July 1, 2008 and November 30, 2009. Prevailed in one case that was the subject of a petition to the United States Supreme Court, after briefing by County Counsel led to denial of review.

In LPS/Probate, obtained the Public Guardian's desired result in 95% of 492 LPS hearings and won all 5 jury trials that went to verdict. Used conservatorship proceedings to protect more than 30 elder abuse victims and pursued litigation actions to recover their real and personal property assets.

Under Board direction, County Counsel objected to the Fullerton Redevelopment Agency's plan to double the size of Fullerton's redevelopment area at the cost of approximately $25 million in property tax revenue over the next 45 years ($9 million present value). Our objection forced Fullerton to negotiate with the County and resulted in an agreement whereby the County will be reimbursed from any tax revenue losses from an expanded redevelopment plan.

Assisted in revisions to the County's protest procedures for purchasing contract procurements. The old procedures did not provide an opportunity for a protester to review the evaluation scores and other bidders' proposals. The adjustment in the procedures have saved and will likely continue to save the County significant litigation expenses (inasmuch as one protester was poised to take the matter to Superior Court until the alternative approach was implemented).

Worked with the National Institute of Government Purchasing ("NIGP") to propose recommendations for streamlining County purchasing and reduce bottlenecks. The NIGP report when released (probably early 2010) should result in changes that will increase efficiency among purchasing staff and reduce overall County costs.

Provided ongoing legal assistance to County's $50 million Co-Generation Project to make County facilities self-sufficient for energy needs. Resolved disputes with equipment supplier and avoided delays in implementation of project.

Effectively represented HCA in Special Education contested cases brought by parents and in other Special Education proceedings before the Office of Administrative Hearings, resulting in significant savings to the County. HCA is charged with the duty to coordinate with local educational agencies ("LEAs") to provide services to children with disabilities under Chapter 26.5 of the California Government Code. When an LEA makes a decision to designate a student as suffering from a "serious emotional disturbance," that designation triggers HCA's duty to determine whether outpatient mental health services or placement in a residential treatment center ("RTC") are necessary in order for the student to benefit from the educational services provided by the LEA. Most contested cases involving HCA are filed by parents who dispute HCA's decision either to place or not to place children in an RTC. Petitioning parents typically seek compensation for the cost of mental health services they have incurred, other ancillary costs, and attorneys' fees. In deciding whether or not to settle contested cases through payment of compensation, HCA has a distinct advantage over the LEAs. Because HCA is represented by County Counsel as its "in-house" counsel, HCA does not have to weigh attorney's fees into its decision as to whether settlement of cases makes sense or whether the matter should be litigated based solely on the merits of each case. In contrast, the school districts must retain the services of outside counsel who charge significant fees to prepare for and handle the hearing on a contested case. As a result, the LEAs are much more inclined to settle cases and pay compensation to the parents in order to avoid litigation costs. As a result, the County pays far less in settlements of these cases due to the services provided by County Counsel. For example, since March 2008, when the attorney currently assigned to these cases took on the assignment, the office has handled 35 contested cases. Of those 35 contested cases, only six cases resulted in settlement payments by HCA and none of the cases resulted in an adverse result at hearing. In those cases in which settlements occurred between the petitioners and both HCA and the LEAs, HCA paid a total of only $7,250.00, in stark contrast to the $116,200.00 paid by the LEAs.

Defended the County and the Sheriff's Department against numerous motions, actions and/or proposed court orders filed by jail inmates (representing themselves "in pro per") challenging conditions of confinement or seeking special privileges. When the Sheriff wants to oppose these actions by inmates (which is usually the case), the Sheriff must be represented on these matters. Currently that task is assigned to County Counsel. County Counsel continues to handle and resolve all such matters effectively and efficiently.

Effectively responded to numerous motions (known as "Pitchess" motions) seeking disclosure of peace officer personnel records. Statutorily, the Sheriff, Probation and the DA have a duty to protect the personnel records of peace officers. All three departments rely on County Counsel to oppose or respond to motions seeking disclosure or production of such records, in order to ensure that the proper legal standards relating to a required showing of good cause and limitations on disclosure are followed by the courts. During the past five years, the average number of such motions handled by County Counsel has been approximately 46 each year. Any reduction in staffing levels would hamper County Counsel's ability to carry out this essential function. Other counties, such as Riverside County, contract this work out to private law firms, which obviously results in far greater expense to those counties than the incremental expense of County Counsel's time on these matters.

Coordinated with Probation Department and Juvenile Court judicial officers to streamline the procedures for holding financial hearings to seek recovery from parents for the costs of placing juveniles on probation in delinquency proceedings, which should yield increased cost recoveries to the County.

Provided many departments, including Sheriff and SSA, with contract review services and advice on public project contracts, including review of bid documents, bid procedures, and contract terms to verify compliance with Public Contract Code.