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Work Session IX: "The Role of Outside Counsel" The need for specialization in ever increasing complex legal situations. How can this relationship be managed to meet expectations, what are the benefits and pitfalls in such relationships.

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GUIDELINES FOR OUTSIDE COUNSEL
NEW YORK CITY LAW DEPARTMENT

1. Introduction. These Guidelines apply to all attorneys ("Outside Counsel" or "Counsel") retained by the New York City Law Department (the "Department") to provide legal services in connection with a matter. Outside Counsel shall become familiar with and adhere to these Guidelines in providing legal services in connection with the matter. The Department wishes to remind Outside Counsel that the Department expects Counsel to provide high quality legal services at reasonable cost, to maintain transparency in billing, and to be mindful of the responsibility to conserve public resources without compromising the quality of the services provided.

2. Designated Contact.

a. A Department attorney (the "Designated Contact") will be assigned to work with Outside Counsel. Outside Counsel shall contact the Designated Contact for any approvals required by these Guidelines of litigation events or expenses. Outside Counsel should consult frequently with the Designated Contact regarding matters Counsel is handling so that the Department will have current information about the status of the matters and can have input on such questions as whether a particular research project is necessary, a particular deposition is worthwhile, or a particular document production can be completed more economically in-house. As appropriate, Counsel also will schedule periodic meetings and conference calls with the Department to discuss developments and strategy in the matter.

b. Outside Counsel shall contact the Designated Contact at the beginning of the engagement to set up an initial meeting at which relevant names and phone numbers, to the extent then known, can be given to Outside Counsel, and arrangements can be made for the provision of documentary evidence, including electronic discovery, to Outside Counsel. Whether such a meeting is actually held will be at the discretion of the Designated Contact.

c. Outside Counsel should use its professional judgment in deciding whether to obtain the prior approval of the Designated Contact for a litigation event, where such approval is not specifically required by these Guidelines. Litigation Events that are specified in a plan of litigation and/or a budget that was previously submitted to and approved by the Designated Contact will ordinarily not need to be re-submitted for approval at the time the litigation event is about to transpire.

d. All bills submitted by Outside Counsel will be reviewed by and are subject to the approval of the Designated Contact.

4. Notifications. Counsel shall promptly advise the Department in writing of any significant developments in a matter. Unless a court appearance, settlement discussion or other important meeting is scheduled less than 72 hours in advance, Counsel shall notify the Department of such events at least 72 hours in advance (or within such other time as the

Designated Contact may agree to) to enable Counsel and other representatives of the City to attend or participate. In the event that a court appearance, settlement discussion or other important meeting is scheduled less than 72 hours in advance, Counsel shall notify the Department at as early a time as is practicable.

5. Settlement Offers or Negotiations. Outside Counsel shall immediately convey all offers of settlement to the Designated Contact who will consult with the appropriate persons in the Law Department and the City regarding any such offers. Counsel may not enter into any settlement negotiations or settlements without the prior approval of the Designated Contact. The Department will make all determinations concerning such offers of settlement. Counsel shall consult with the Designated Contact and obtain the Designated Contact's prior written approval for any proposed resolution of the matter Counsel is handling.

6. Copies of Documents. Outside Counsel shall provide the Designated Contact with copies of drafts of all significant pleadings in any litigation or other documents that Counsel intends to provide to, or file with, a court or a government agency that may potentially affect the disposition of a matter, for the Department's review and approval, at least 72 hours before they are filed or submitted (or such other time as the Designated Contact may agree to). Counsel shall also provide the Designated Contact with final documents and/or imaged copies of as-filed documents, as the Designated Contact may request, as soon as is reasonably practicable. (If no instructions are received from the Designated Contact, Outside Counsel shall, at a minimum, provide copies of as-filed documents.)

7. In addition to the requirements of Paragraph 6 above, Outside Counsel shall provide the Department's Chief Information Officer with electronic copies, in native file format, of all final memoranda, briefs and other work product produced in the case/matter approximately every six months during the course of the engagement, and at the end of the engagement. Outside Counsel shall provide each case/matter's electronic documents on read-only DVDs or CDs with labeling, directory structure, file names and other descriptive details, and with an encryption method, all as the Department may reasonably require.

8. Conflicts of Interest. During the term of this Agreement, Outside Counsel will be permitted to represent clients other than the City in matters involving the City, or being heard before City agencies, where such matters are not related to the subject matter of this agreement and where the City determines that the conflict of interest related to work being performed under this Agreement and the work to be performed for the other client or prospective client is not incompatible with the Outside Counsel's representation of the City under this Agreement. In light of this restriction, Outside Counsel shall disclose to the City, as soon as is reasonably practicable, the identity of any client or prospective client the Outside Counsel represents or proposes to represent in any matter involving the City, or being heard by any City agency, with a short description of the matter and the possible adverse consequences to the City of such representation. Thereafter, Outside Counsel shall take one of the following actions:

(a) obtain the City's consent, in writing, to waive the conflict. Where appropriate, in the discretion of the City, the City may require, as a condition of such consent, that Outside Counsel implement and maintain, for the duration of the matter, effective screening procedures (an internal "firewall") to prevent the flow of information between the attorneys performing services

under this Agreement and the attorneys representing the other client or prospective client, and any such firewall shall be subject to the City's approval; or

(b) discontinue (or forego) its representation of the other client.

9. Contact with the Media. Counsel is not authorized to comment publicly on any City matters, to issue statements or press releases or to disclose to the media any facts involving or relating to the matter Counsel is handling without the prior approval of the Department. Counsel shall cooperate with the Department's press office regarding requests for information and, if requested by the Department's press office, assist in the preparation of documents relating to the matter. If Counsel receives any media inquiries, Counsel shall refer them to the Department's Communications Director, telephone number 212 788-0936.

10. Submission of a Budget. For each matter, Outside Counsel shall provide the Designated Contact with a budget, which will be reviewed by the Department. The budget shall include a good faith estimate of the cost of the services, including an identification of each of the various tasks Outside Counsel expects to perform, the projected number of hours of attorney time and paralegal time (if any) estimated to be needed to complete each task, and the fees and costs anticipated to be associated with each task. If, during the course of the representation, it appears that Outside Counsel may exceed the budget for a particular task by 10% or more, Counsel shall notify the Designated Contact in advance, provide a written explanation for the anticipated variance from the budget, and obtain the approval of the Designated Contact for any such variance. Where the Department deems the explanation to be inadequate, the Department may adjust the billing for the task so that it conforms to the budget.

11. Staffing.

a. Attorneys. Counsel and the Designated Contact will agree upon the specific attorney(s) who will have a lead role in the matter. Counsel may not substitute a different attorney for a lead role without the Department's prior approval in writing. Counsel shall submit a staffing profile that identifies the partners, associates and paralegals who will work on the matter. Changes in such staff are subject to the prior approval of the Designated Contact. Counsel should minimize staffing changes; however, it is recognized that staffing changes may be necessary from time to time. The Department will not pay for learning time associated with a change in personnel initiated by Counsel, except that, if the change in personnel was made at the request of the Designated Contact and not because of poor performance, inaccessibility or lack of cooperation by the original personnel, the Department will pay the reasonable costs associated with the review of the file by the new personnel.

b. In performing the services, Outside Counsel shall select, for each task, an individual suitable for the task and the specific needs of the matter. Each such individual must have appropriate experience in the area in which he or she is performing services.

c. Outside Counsel shall not:

(1) overstaff City matters;
(2) charge for any services that duplicate the effort of other assigned staff;
(3) charge for time of newly assigned lawyers, after a change in personnel, spent to become familiar with the matter, or time spent duplicating work performed by an attorney previously assigned to the matter except in the circumstances permitted in 11.a. above.

d. Limitation on Hourly Billing for Multiple Attorneys. The Department will pay for only one attorney to attend meetings, depositions, hearings, court conferences, and trials, unless expressly and clearly specified in Counsel's litigation plan, or unless otherwise approved in advance by the Designated Contact.

e. Paralegals. Some examples of the kinds of activities that generally should be performed by a paralegal, and not by an attorney, are:

(1) Ordering searches such as title or legal records searches;
(2) Ordering public records;
(3) Organizing and re-organizing files that involve case documents such as separating and cataloguing responses to requests for production of documents;
(4) Indexing file material, but only if a degree of professional judgment with respect to categorization is required;
(5) Preparing subpoenas or notices for deposition, entry of appearance, substitution of Counsel, requests to produce, jury trial demands, and other routine litigation documents;
(6) Summarizing answers to interrogatories;
(7) Preparing records requests and subpoenas;
(8) Summarizing employment and other records;
(9) Abstracting or digesting depositions; and
(10) Summarizing document production.

f. Experts and consultants. The selection and retention of experts, appraisers, consultants, and investigators shall be coordinated with and approved by the Designated Contact. Outside Counsel shall itemize charges for any such services on its invoices.

12. Legal Research. The Department will pay only for research reasonably necessary to complete the project. Outside Counsel shall obtain prior approval from the Designated Contact before conducting a legal research project that is expected to exceed ten hours. Counsel shall consult, within its own firm and with the Designated Contact, prior to conducting legal research, to determine whether similar issues have been previously researched by the firm or by the Department. This is especially true of Notice of Claim and Statute of Limitations issues, which are frequently litigated by the Department. Counsel is required to use such prior research where possible and applicable, and in such situations may charge the Department only for research

connected with updating the previously researched issues. Counsel shall not initiate research before it is needed unless the Designated Contact expressly approves in advance.

13. Use of Certain Law Department Resources. Where practicable, Outside Counsel should use the Department's resources for service of subpoenas unless the Designated Contact directs otherwise. Outside Counsel should speak to the Designated Contact regarding whether Outside Counsel should use the Department's court reporting services contractors on the matter.

14. Intra-Office Conferences. Intra-office conferences may be held for the purpose of discussing strategy and legal issues in the matter. However, all intra-office conferences for which the Department will be billed may be held only as needed, and their length, as well as the number of persons attending, shall be kept to a minimum. The Department will not pay for conferences that are supervisorial or instructional (including conferences regarding case management). Also, Counsel may not bill for non-substantive internal conferences about City matters. Bills for intra-office conferences shall describe in detail the reason for the conference and the subject matter of the discussion.

15. Reviewing Files. The Department will not pay for the review of a file by an attorney who is merely supervising the work of another employee of the firm. Similarly, Counsel shall not bill the City for file review if an event does not precipitate such review (such as a telephone call or receipt of correspondence) or if the file review does not result in the creation of any tangible work product. The Department considers such review to be part of Counsel's overhead and contained in Counsel's hourly rate structure. Any invoice that includes "file review" as an item shall provide details or that item will not be considered for payment by the Department.

16. Document or Deposition Summaries. Outside Counsel may not charge for routinely digesting, abstracting, or summarizing documents and depositions, unless the Designated Contact has expressly and specifically agreed to such services.

17. Written Status Reports. Outside Counsel may not charge the Department for any status report, unless the status report was requested by the Designated Contact and the Designated Contact has agreed that it is compensable.

18. Communications with City Employees Outside the Law Department. Before Counsel engages in any substantive communications with City employees outside of the Department, Counsel shall inform the Designated Contact of its intention to have such a communication. (After the first instance, Counsel is not expected to inform the Designated Contact each and every time it has such a communication unless the Designated Contact has specifically asked Counsel to provide such information, or unless a communication is likely to go or has gone beyond the scope of the communications approved by the Designated Contact.)

19. Approaching the Not-to-Exceed Amount of the Contract. If Outside Counsel's total billings are approaching the "not-to-exceed amount" of the contract, Outside Counsel shall inform the Department's Agency Chief Contracting Officer ("ACCO") in writing. The Department cannot pay any invoices that contain fees in excess of the not-to-exceed amount of the contract unless the contract is amended to increase the not-to-exceed amount of the contract by an amount sufficient to cover such fees.

20. Reimbursable Expenses. The Department will reimburse Counsel for actual, reasonable and necessary out-of-pocket expenses at cost without mark-up. All expenses shall be documented to the satisfaction of the Department. Some examples of expenses for which the Department may allow reimbursement, unless excluded by the terms of a particular contract, are the following:

a. Long distance telephone calls, without adjustment for taxes or surcharges of any kind.

b. Messenger Services.

c. Overnight or other expedited delivery services. The Department does not expect all documents to be hand-delivered or sent by an overnight or express delivery service, but such services may be used where appropriate under the circumstances.

d. Photocopying and Bates Labeling. Photocopying and Bates labeling costs are reimbursable if performed for Outside Counsel by an outside photocopying vendor. In such instances, reimbursement will be made at the lower of Outside Counsel's actual cost or an amount not to exceed 12 cents per page for routine copies, 39 cents per page for color copies, and five cents per page for routine Bates labeling. Whenever Outside Counsel seeks reimbursement for copying or Bates labeling by an outside photocopying vendor, Outside Counsel shall present to the Department a copy of the photocopying vendor's invoice, which shall identify the type of copying (e.g., routine or color), the number of pages of each type copied, the number of pages Bates labeled, and the cost per page for each of these services. In-house copying costs are not reimbursable. When in-house Bates stamping is performed by an Outside Counsel paralegal, Outside Counsel will be reimbursed for the time spent Bates stamping at the paralegal hourly rate.

e. Lodging and Meals. Lodging and meals are reimbursable only in the context of travel under the contract, and then will be reimbursed at rates no greater than the lesser of the actual cost (without markup) or the maximum amount set forth in the Meals and Incidental Expense Breakdown of the Federal Travel Regulation in effect on the date the expense was incurred, published at **www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC**. The Department will not reimburse for meals in connection with local travel, meaning travel that is 100 miles or less from the offices of Counsel, unless the contract otherwise expressly provides. In no event will the Department pay any broker's fee or finder's fee associated with the rental of any hotel room, apartment or other lodging.

f. Travel expenses such as Air Fare, Mileage, Rental Cars, and Taxi Fares. Counsel shall bill air travel under the contract at no higher than the economy or coach fare. Counsel shall use its best efforts to make airline reservations in advance so as to take advantage of lower air fares. While on non-local travel

under the contract, meaning travel that is more than 100 miles from Counsel's offices, Counsel may bill the Department for reasonable mileage or for the cost of a rental car when necessary and when the cost of a rental car is less than other forms of ground transportation. Under such circumstances, the Department will reimburse only at the rate for small, non-luxury vehicles. Counsel may seek reimbursement for taxi fares when on non-local travel but any requests for reimbursement for taxi fares will be closely scrutinized for necessity and reasonableness.

In some instances the Designated Contact may direct Outside Counsel to coordinate travel through the Travel Coordinator in the Department's Cashier's Office.

If Counsel's travel is both for the Department and for another client or other activities of Counsel, Counsel may bill the Department only for the Department's *pro rata* share of the travel expenses.

21. Travel Time. Counsel may bill the Department for travel time at the applicable hourly rate(s) as set forth elsewhere in the contract. If Counsel's travel is both for the Department and for another client or other activities of Counsel, the Department shall be billed only for the Department's *pro rata* share of such travel time. Non-local travel shall be approved in advance by the Designated Contact. Consistent with Paragraph 11.d. of these Guidelines, the Department will pay for travel by only one attorney, unless the Designated Contact gives advance approval for travel by more than one attorney.

22. Non-Reimbursable Expenses. The Department will not pay for the following expenses, without limitation:

a. facsimile charges other than the long distance charges associated with the transmission.

b. local telephone expenses.

c. office supplies.

d. charges for business meals or refreshments, unless related to out-of-town travel and then only in accordance with these Guidelines.

e. in-house messenger services.

f. law books, journals, periodicals, subscriptions, etc.

g. computer consultants or technical support.

h. mobile phone charges.

i. charges for Lexis, Westlaw, and other such research services.

j. charges associated with purchasing or renting software or equipment such as copiers, printers, computers, etc.

23. Non-Reimbursable Services. The Department will not pay for the following services, without limitation:

a. secretarial, clerical or word processing services (whether ordinary, temporary or overtime).

b. administrative services (including file creation, file organization and maintenance or closing).

c. accounting, billing or book-keeping services. (This does not apply to the situation where Outside Counsel has engaged an accountant or accounting firm as a subcontractor to provide expert consulting services in support of the litigation.)

d. the time of summer associates.

e. the time of law school graduates who are not admitted to the bar, except that, with the prior approval of the Designated Contact, such time may be billed at paralegal rates.

f. the time of librarians.

g. the time of computer or information technology support staff, or litigation technology support technicians. (This does not apply to the situation where Outside Counsel has engaged a computer, information technology or litigation technology support consulting firm to provide expert consulting services in support of the litigation.)

h. charges associated with creating, maintaining or using an information or case management system.

i. the time spent reviewing, negotiating or executing the contract or any amendments to the contract.

j. charges associated with preparing bills or negotiating disputes over bills.

k. redrafting due to substandard work.

l. office overhead costs of any kind.

24. Additional Invoicing and Billing Guidelines.

a. Individuals assigned to work on a matter are expected to perform at high levels of efficiency.

b. Outside Counsel shall submit invoices for services rendered and/or for expense reimbursement, at a minimum, on a monthly basis. Invoices shall be submitted no more than 30 days after the end of the month in which the services reflected on the invoice were provided. It is especially important that any services rendered prior to June 30th of a given year be submitted no later than July 31st of that year. The Department prefers that invoices cover no more than one calendar month, so that no one invoice will show hours billed in different months. There may be situations in which this is not practical, such as where the billing is task-based. If billing questions arise, they can be discussed with the Designated Contact or with the Department's Fiscal Section, telephone # 212 788-0358.

c. Where Counsel has been assigned more than one matter under a particular contract, and each matter has a different case number associated with it, Counsel shall send a separate invoice for each such matter.

d. Each invoice shall contain the following information:

(1) The case number (i.e., the Law Manager number or NYCLIS number).

(2) The name or title of the matter.

(3) A unique invoice number for the particular invoice.

(4) Counsel's taxpayer identification number.

(5) The name of the Designated Contact.

(6) Counsel's billing contact.

(7) The time period covered by the invoice.

(8) The date of the invoice.

(9) For hourly rate billing:

A. The specific dates of the services, the names of the persons who performed the services billed, their titles and, where applicable, their respective hourly rates.

B. A full description of each charge. For charges requiring prior approval of the Designated Contact, note the date of the approval.

C. Time spent in .10 of an hour increments. (Not applicable in the case of task-based billing.)

(10) For task-based billing: A description of each completed task for which payment is sought, and the amount billed for the completion of the task.

(11) An itemized description of any disbursements and the charge for the disbursements.

(12) Time Keeper Summary.

e. Counsel shall avoid vague or unclear descriptions of services rendered. A vague or unclear invoice is one that does not provide clear and specific information on, in most instances, the nature of the task, the reason for the task, the individual who performed the task, or the amount of time that was spent on a task. Counsel's invoices shall provide clear, specific information relating to each task. For example, a bill for a telephone conversation shall specify the parties and the purpose of the call. A bill for the drafting or review of any correspondence, pleadings, or other documents shall specifically describe the item in question. A bill for legal research time shall specify the issue(s) researched. The Department will seek clarification from Counsel where it finds a particular invoice to be vague or unclear and may reduce the amount of an invoice if a description satisfactory to the Department is not provided.

f. Block billing is not permitted in hourly rate billing. Block billed entries are items that contain a single charge for more than one activity or more than one type of disbursement. Each item of work shall be associated with a discrete charge. An example of unacceptable block billing is the following:

05/12/10 Drafted letter to plaintiff's counsel; telephone conference call with plaintiff's counsel; discussed conference call with Law Department.

2 hours

g. Unless Counsel is otherwise instructed by the Department, Counsel's invoices shall be addressed and submitted to the New York City Law Department, Fiscal Section, Room 5-121, 100 Church Street, New York, New York, 10007.

End of Guidelines for Outside Counsel