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M E M O R A N D U M

DATE: August 22, 2006

TO: Metropolitan King County Councilmembers

FROM: Cheryle A. Broom, County Auditor

SUBJECT: Performance Audit Survey of the Prosecuting Attorney's Office Civil Division

Attached for your review is the performance audit survey report of the Civil Division of the Prosecuting Attorney's Office. The Civil Division provides legal representation for the legislative and executive branches of county government. The audit objective was to obtain a general sense of the efficiency and effectiveness of the Civil Division. We did not attempt to assess the quality and effectiveness of the legal services provided with respect to any individual case or matter.

The general audit conclusion is that while a majority of the Civil Division's customers are very satisfied with the services they receive, there is a lack of quantified data to demonstrate the efficiency or effectiveness of the division.

The nine recommendations of the report are intended to build upon the Civil Division's efforts to improve data for:

- Linking workload to expenditures
- Assessing the cost-effectiveness of outside counsel
- Improving the accuracy of the model used to bill customers for service
- Improving the measurement of its performance

The Prosecuting Attorney's Office's response to the study concurred with all of the recommendations, and the office has already begun implementing many of the recommendations.

The Auditor's Office sincerely appreciates the cooperation received from the Prosecuting Attorney's Office management and staff.

PERFORMANCE AUDIT SURVEY

CIVIL DIVISION
KING COUNTY
PROSECUTING ATTORNEY'S OFFICE

Presented to
the Metropolitan King County Council
Labor, Operations & Technology Committee
by the
County Auditor's Office

Cheryle A. Broom, King County Auditor
Larry Brubaker, Senior Principal Management Auditor
Cindy Drake, Senior Management Auditor

Report No. 2006-04

August 22, 2006

Auditor's Office Mission

We conduct audits and studies that identify and recommend ways to improve accountability, performance, and efficiency of county government.

Auditor's Office Vision

We are committed to producing substantive work of the highest quality and integrity that results in significant improvements in accountability, performance, and efficiency of county government. We share a commitment to our mission, to our profession, and to a collaborative work environment in which we challenge ourselves to accomplish significant improvements in the performance of the King County Auditor's Office.

❖

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The King County Auditor's Office provides oversight of county government through independent audits and other studies regarding the performance and efficiency of agencies and programs, compliance with mandates, and integrity of financial management systems. The office reports the results of each audit or study to the Metropolitan King County Council.

The King County Auditor's Office performs its work in accordance with applicable Government Auditing Standards.

❖

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Alternative Formats Available Upon Request

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EXECUTIVE SUMMARY

Background

At the request of the Metropolitan King County Council, the King County Auditor's Office conducted a performance audit survey of the Civil Division of the King County Prosecuting Attorney's Office. The Civil Division provides legal representation for the legislative and executive branches of county government. It also defends the county against claims and lawsuits brought by employees or outside parties.

In this survey we did not attempt to assess the quality or effectiveness of legal work done on individual matters or cases. We found few quantifiable standards or little data with which to assess the efficiency or effectiveness of the Civil Division. Due to the limited scope and performance data, we attempted to obtain a general overview of the efficiency and effectiveness of the Civil Division by interviewing its customers, comparing costs to other jurisdictions, and assessing its performance measurement system. We also reviewed the division's model for billing its customers and its policies for selecting and monitoring the use of outside counsel.

Summary of Findings and Recommendations

The majority of the Civil Division's customers are very satisfied with the services they receive, and most customers indicated that services have improved over the past few years. However, because of a lack of performance data available, the Civil Division is unable to quantify its performance or identify trends in performance. This report acknowledges the difficulty in measuring the effectiveness of the civil attorney function, and also acknowledges that the division is taking steps to improve the data it collects for measuring performance. We also looked for opportunities to build upon these efforts.

We found that the division makes efforts to communicate with its clients when problems arise, and takes actions to address problems. We also found that the division is working to address problems with the availability of management data that were identified in this review. This report includes nine recommendations that are intended to build upon these efforts.

Specific areas of findings include:

Cost of Services

- Workload data maintained by the Civil Division is insufficient to demonstrate the relationship between workload growth and cost growth.
- Civil Division expenditures for in-house attorneys appear to be comparable to other jurisdictions, but King County's expenditures for outside counsel appear to be high relative to other jurisdictions.

Equity of Billing Model

The model used for billing customers for service is equitable, but its accuracy is dependent on the accuracy of time-keeping data provided by individual attorneys. Time-keeping data has been incomplete and too general in the past, but improvements are being made to the data.

Policies and Procedures for Selecting and Monitoring the Use of Outside Counsel

While it is not subject to the county's procurement process, the Civil Division has policies and procedures for promoting a competitive process when procuring outside counsel. These policies and procedures are not always being followed, but the division is taking steps to better document the reason for exceptions.

Customer Satisfaction

A majority of the Civil Division's customers are very satisfied with the services provided, and most thought that services are improving. Most customers also reported that they can communicate problems to Civil Division management, and that the problems are addressed. Some customers expressed concerns that Civil Division attorneys do not have sufficient expertise in specific areas of the law or are too risk averse, or that they receive inconsistent advice.

Performance Measurement

Measuring the performance of a civil law function is difficult, and the Civil Division's performance measurement system reflects this difficulty. We provide examples of how data might be used to better measure performance.

The nine recommendations of the report are intended to build upon the Civil Division's efforts to improve data for:

- Linking workload to expenditures
- Assessing the cost-effectiveness of outside counsel
- Improving the accuracy of the billing model
- Improving the measurement of its performance

Summary of Prosecuting Attorney's Response

The Prosecuting Attorney's Office concurred with all of the report's recommendations, and indicates that the office has already begun implementing many of the recommendations.

See the appendices section for the complete text of the Prosecuting Attorney's Response.

Auditor's Comments

The Auditor's Office commends the Prosecuting Attorney's Office for taking prompt actions to implement the recommendations of the report.

Acknowledgement

We thank the management and staff of the Prosecuting Attorney's Office for their responsiveness and assistance to the auditors.

1 INTRODUCTION

Background

At the request of the Metropolitan King County Council, the Auditor's Office conducted a performance audit survey of the Civil Division of the Prosecuting Attorney's Office (PAO). The Civil Division provides legal representation for the legislative and executive branches of county government. It also defends the county against claims and lawsuits brought by employees or outside parties.

Audit Survey Did Not Attempt to Assess the Quality of Legal Services Provided in Individual Cases...

The survey was limited in scope. We did not attempt to assess the quality or effectiveness of the legal services provided in any individual case or issue, nor did we look at other divisions of the PAO (Criminal, Fraud, and Family Support). Also, there is little quantifiable data available with which to assess either the efficiency or effectiveness of the Civil Division. Therefore, we attempted to assess the general efficiency and effectiveness of the Civil Division by evaluating its performance measurement system, comparing costs and practices with other jurisdictions, and interviewing Civil Division customers. We also reviewed certain policies and procedures, evaluated internal measurements of workload and attorney timekeeping, and assessed the equity of the model used to bill county agencies for Civil Division services.

Scope

...Instead, the Audit Assessed the Equity of the Billing Model, Procedures for

Our survey attempted to answer the following questions:

- Is the methodology for billing county agencies for Civil Division services equitable?
- Use of outside counsel:

Procuring Outside Counsel, Costs, and Performance Data

  - Under what circumstances does the Civil Division use outside counsel?
  - Does the Civil Division use a competitive process for selecting outside counsel?
  - How does the Civil Division monitor the work of outside counsel?
- Costs of Civil Division services:
  - How much have costs increased over time?
  - How do costs compare with workload?
  - How do costs compare with other jurisdictions?
- Are the customers of the Civil Division satisfied with its services?
- How does the Civil Division measure the efficiency and effectiveness of its services?

In the course of the survey, the audit team assessed the effectiveness of internal controls that were relevant to the scope of the audit survey.

The remainder of the report discusses our findings and recommendations related to these questions.

2 COST OF CIVIL DIVISION SERVICES

Chapter Summary

In this chapter, we look at the cost of Civil Division services, assess whether information is available to compare cost to workload, and compare Civil Division costs with the cost of the civil attorney function in other jurisdictions. In general, we found that:

- The costs of the Civil Division have been growing by approximately nine percent per year.
- No data is maintained on the relationship between cost growth and workload growth.
- Excluding costs of outside counsel, Civil Division costs, relative to the size of the county, are similar to the costs of the civil attorney function in other jurisdictions. However, including the costs of outside counsel, King County's costs might increase relative to other jurisdictions.

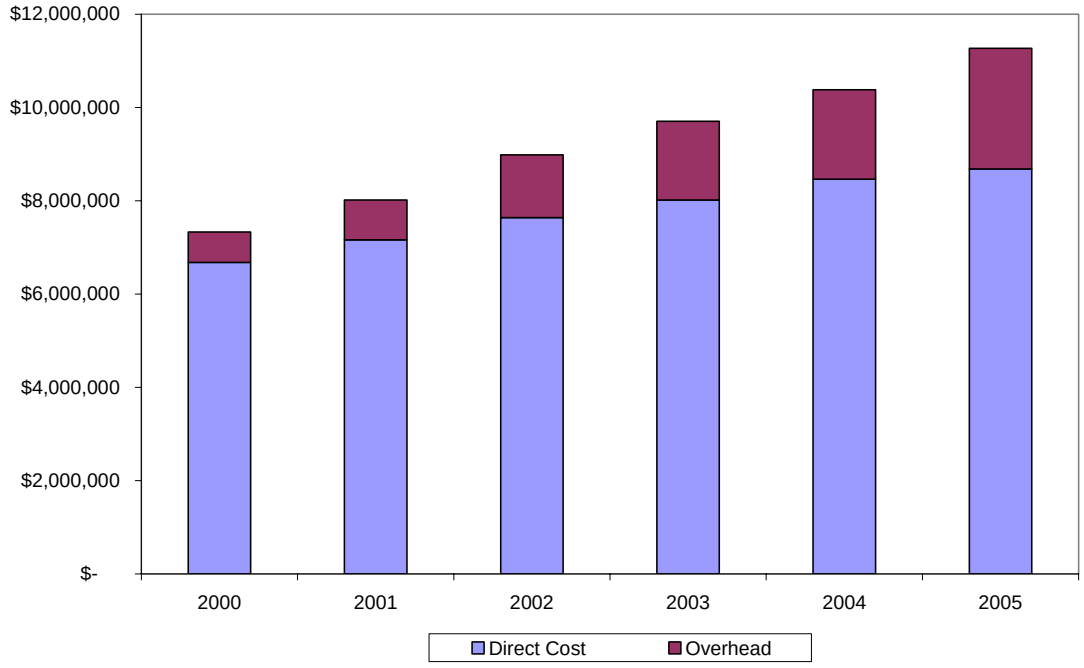
Cost Trends

Civil Division Costs Growing by 9% per Year

Exhibit A provides Civil Division costs for 2000 through 2005, broken out between direct costs and overhead. Direct costs include the salaries and benefits of Civil Division staff, plus other costs such as supplies and travel. Overhead costs include the costs that are allocated to the Civil Division for the purpose of client billing, including departmental overhead, Current Expense overhead, and facilities management charges. As indicated by Exhibit A, direct Civil Division costs have increased from $6.7 million in 2000 to $8.7 million in 2005, an average increase of about five percent per year, while total costs billed to clients have

increased from $7.3 million in 2000 to $11.3 million in 2005, an increase of about nine percent per year.

EXHIBIT A
Civil Division Costs (not including outside counsel)
2000 - 2005



SOURCE: Direct Civil Division costs from ARMS reports.[1] Total costs billed to clients provided by the PAO.

Exhibit A indicates that overhead costs have been growing more quickly than direct service costs. According to PAO budget staff, a major reason for the growth of overhead costs is attributable to leasing space during the Courthouse Seismic Remodel project. Now that the PAO staff is again housed in the courthouse, these costs will decrease, and we note that the projected amount of client billings for 2006 has decreased, and the decrease is attributable to a reduction in overhead costs.

[1] We subtracted from Civil Division cost data the amount spent for attorneys performing involuntary treatment and family law services. This was excluded because we were attempting to review the civil law function only. While the costs of these attorneys are included within the Civil Division for accounting purposes, their function is different than the remainder of the Civil Division.

Expenditures for Outside Counsel

Agency Expenditures for Outside Counsel Not Tracked

The costs portrayed in Exhibit A do not include the cost of outside counsel, which is arranged for and monitored by the Civil Division, but paid for by the client using outside counsel. Currently, the Civil Division does not track the amount spent on outside counsel by county agencies. Rather, the Civil Division reviews the bills submitted by outside counsel to ensure that they are reasonable and then forwards them to county clients for payment. For the purposes of this audit survey, we asked the Civil Division to provide us with the amount spent on outside counsel in 2005. According to the Civil Division, the amount in 2005 was over $4.2 million, and probably not out of line with the spending from previous years. We believe the amount spent on outside counsel is noteworthy because it is approximately half the amount of the direct costs of the division. The county should know the total amount spent for civil legal services, including the cost of outside counsel. However, without routine tracking of expenditures on outside counsel, the full cost of civil legal services is not known. We note that the Civil Division recently indicated that it has now begun to track expenditures on outside counsel.

RECOMMENDATION 1 The Civil Division should track county agencies' expenditures for outside counsel.

Relationship Between Costs and Workload

As was illustrated in Exhibit A above, total costs billed to clients of the Civil Division grew by about nine percent per year between 2000 and 2005 (although direct costs grew by about five percent per year). We looked at whether the Civil Division can demonstrate that workload has also been growing at a rate commensurate with the growth in costs.

Little Data Available to Compare Workload Growth to Cost Growth

We found that while the Civil Division does track some information relating to workload, the information that is tracked is not useful for comparing the growth in workload to growth in costs. Further, PAO budget staff indicated that there is little attempt made to support budget requests with workload data. Instead, the PAO will request resources for additional staff in the budget if a client agency agrees to pay for the addition in advance.

Workload data tracked by the Civil Division consists primarily of a count of each unique item of workload (matter) that is tracked in the attorney timekeeping system. Counts of new matters received each year are compared to the number of new matters received in the previous year. Comparing the number of new matters received each year does not identify how much effort is needed to resolve each year's workload. For example, some matters (e.g., litigation of a major case) require a substantially different amount of effort than other matters (e.g., providing legal review of a contract). No attempt is made to weight the workload data that is monitored to calculate an overall measure of workload to support budget requests. In contrast, we found that the Washington State Attorney General's office has a sophisticated system for weighting its workload. For example, it applies 10 different weights to different types of tort claims.

We recognize that attempting to measure the workload of civil attorneys is difficult. Nevertheless, we identified other jurisdictions that measure workload more comprehensively. For example, while the data tracked by the King County Civil Division consists of unweighted counts of the number of new matters tracked each year (*inputs*), other jurisdictions also count *outputs*, or the number of work products completed by attorneys (e.g., ordinances written, contracts reviewed, legal briefs written). Such data on outputs might be more easily weighted to provide

an overall measure of workload, and might also be used to monitor the productivity of individual attorneys.

RECOMMENDATION 2 The Civil Division should make greater efforts to measure its workload, including tracking outputs in addition to inputs, and should attempt to link its workload to its budget.

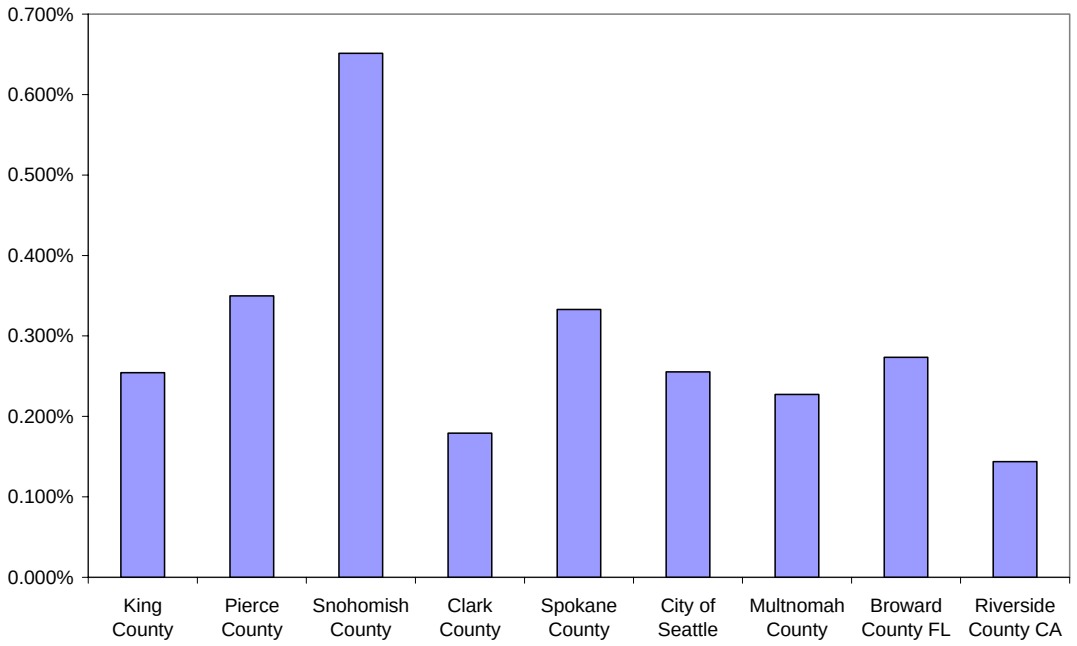
Comparison of Costs With Other Jurisdictions

In order to provide a context for the costs of the Civil Division, we compared its costs to those of the civil attorney function in other jurisdictions in Washington. Also, because King County is much larger than these Washington jurisdictions, we compared Civil Division costs to the civil attorney function in the two counties in the country that are closest to King County in population; Broward County, Florida and Riverside County, California.

Cost as a Percentage of Total Budget

Exhibit B below compares 2005 King County Civil Division expenditures as a percentage of the total county budget with civil attorney expenditures in other jurisdictions.

EXHIBIT B
Civil Division Budget as a Percentage of Total County Budget



SOURCE: King County Auditor's Office analysis of data provided by jurisdictions.

Civil Division Costs Generally Comparable to Other Jurisdictions

This comparison shows that at .25% of total county expenditures, King County Civil Division expenditures are not the highest or the lowest among the various jurisdictions reviewed. Also, the data does not indicate a trend towards economies of scale. Most of the largest jurisdictions in the sample (King County, City of Seattle, and Broward County Florida) ranked about in the middle for civil attorney expenditures as a percentage of the total county budget. Clark County, one of the smallest jurisdictions, had one of the lowest levels of civil attorney expenditures as a percentage of the county budget, whereas Snohomish County, another smaller jurisdiction, had the highest level of civil attorney expenditures.

We note that the expenditures portrayed in Exhibit B do not include expenditures for outside counsel. Among the

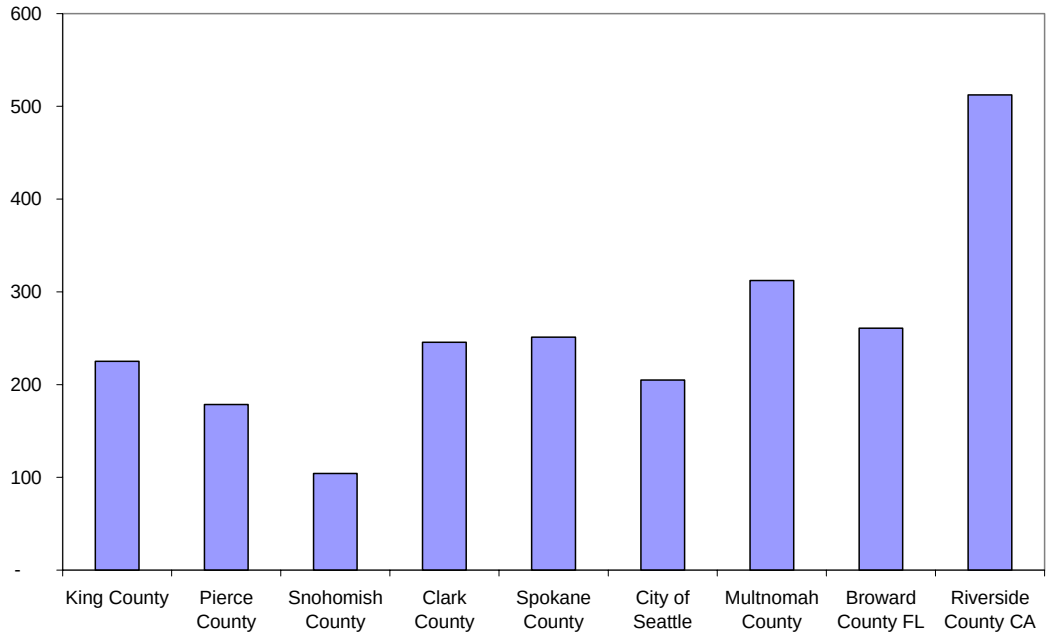
Expenditures for Outside Counsel Appear to Be High in King County

jurisdictions for which we were able to obtain 2005 expenditures for outside counsel (Pierce, Snohomish, and Spokane Counties in addition to King County), King County's expenditures for outside counsel were the highest by a wide margin ($4.2 million in 2005 compared to $298,500 in Spokane County, the next highest amount). Snohomish and Clark Counties reported outside counsel expenditures of less than $25,000). If all expenditures for civil attorney services (including outside counsel) were included, King County's expenditures might rank higher as a percentage of the county budget than is portrayed by Exhibit B.

Total County (or City) Employees to Civil Division Attorneys

We also compared the number of attorneys in the civil law function to the number of total countywide FTEs. This comparison is portrayed as the number of county FTEs per civil attorney. Therefore, a higher number of countywide FTEs per attorney indicate a relatively lower number of attorneys, and vice versa. Exhibit C illustrates the result of this comparison.

EXHIBIT C
Countywide FTEs per Attorney



SOURCE: King County Auditor's Office analysis of data provided by jurisdictions.

Similar to the previous comparison of civil attorney expenditures as a percentage of the county budget, the comparison of countywide FTEs per attorney shows that King County is not the highest or lowest among the jurisdictions in the comparison.

Staffing Level Also Appears Comparable to Other Jurisdictions

Based on these comparisons, we would not conclude that King County is either overstaffed or understaffed relative to civil attorney functions in other jurisdictions. However, if expenditures for outside counsel were also included in the comparison, from the data we were able to obtain from a few other jurisdictions, King County might move toward the relatively high cost side of the continuum. Because we were only able to obtain data on expenditures for outside counsel from a few other jurisdictions, and because the data received were not directly comparable to

King County data, we did not attempt to make comparisons using expenditures for outside counsel.[2]

Hourly Cost of Civil Division Attorneys Considerably Less Than Hourly Cost of Outside Counsel

Comparison of Hourly Cost of In-House Versus Outside Counsel

Using expenditure and time-keeping data, we calculated the cost per hour of service at the King County Civil Division to be $99 per hour. However, this cost is probably overstated, due to underreporting of hours worked by attorneys, and thereby, overstating cost per hour of service. Even so, the cost is less than $100 per hour. In comparison, the cost of outside counsel is often $300 per hour or more. Clearly, it costs significantly less, per hour, to use in-house counsel instead of outside counsel. What is not clear is whether outside counsel requires fewer hours of time to resolve a case, or how the results of efforts by inside counsel compare with the results achieved by outside counsel. While the hourly rate of inside counsel is far lower than that of outside counsel, if outside counsel is able to achieve a favorable result in an important case that may not have been achieved using in-house counsel, or is able to resolve the matter in significantly less time, the higher hourly rate for outside counsel is likely money well-spent.

However, as noted above, King County's expenditures for outside counsel were much higher than the other jurisdictions that provided data. And the magnitude of outside counsel expenditures in King County is such that the county could increase the number of in-house lawyers by about 50 percent if the same amount were spent to hire additional civil deputy attorneys. Civil Division management has consistently suggested to us that the division is overworked and could use additional staffing. A potential way of increasing the amount of

[2] For example, Snohomish County was only able to provide data on outside counsel costs up to 2003. More recent data were not available. Also, Snohomish County's data do not include the cost of counsel hired by the executive for labor negotiations.

attorney time available at no additional cost is to expand the use of in-house attorneys and reduce the use of outside counsel.

RECOMMENDATION 3 The Civil Division should investigate whether the county is utilizing the optimal mix of in-house versus outside counsel.

3 PAO BILLING METHODOLOGY

Chapter Summary

In this chapter, we assess the methodology used by the Civil Division to charge county agencies for legal services. We found that the Civil Division's billing model treats all agencies equitably, as it bases its charges on the percentage of time each attorney spent working on matters for each client. However, we found that some attorneys have not always accounted for all of their time. Additionally, many attorneys track a significant portion of their hours to a general category that does not provide either Civil Division management or clients with any information about the work completed. The Civil Division is working to improve time-keeping data, and we support these efforts and recommend the division begin to analyze the data they collect and consider simplifying data entry with an electronic system.

Civil Division Billing Model

Billing Methodology Based on Attorney Time Allocated Among Clients

The PAO Civil Division bases its charges on the percentage of time each attorney works for each client. Using time records for the 12-month period ending in May of the prior year, the PAO budget manager allocates to each agency a portion of the total cost of each attorney equivalent to the portion of time the attorneys worked for the clients. For example, if an attorney spent 100 percent of his or her time working on issues for one agency, that agency would be billed for 100 percent of the total cost of that attorney. Likewise, if an attorney spent only five percent of his or her time on an agency, that agency would be billed for five percent of the total cost of the attorney. An attorney's total cost includes salary, benefits, division and department overhead, and the cost of support staff.

Attorneys log their time monthly by assigning hours to the appropriate agency, category, and matter. Category examples include litigation, tort claims, and other major activities; matter names describe the specific case, project, or analysis the attorney is working on. All hours are assigned to a client and category, and most categories require the attorney to enter a matter name.

Only non-current expense agencies are billed for Civil Division services; the cost of serving current expense agencies is covered through an appropriation from the Current Expense Fund. The PAO requests funds equal to the department's total budget minus the anticipated revenues from the non-current expense agencies.

Billing Methodology Is Equitable If Attorney Time-Keeping Data Is Accurate

Because the Civil Division's billing model bases charges on actual services provided, the model treats all clients the same. However, clients are billed equitably only if attorneys properly track their time. During our analysis of the Civil Division's time tracking system, we found that attorneys frequently log large blocks of time as General Client Advising (GCA), a category that requires no description of the work completed, and that in the past many attorneys have not logged the minimum number of hours required by a full-time employee.

Some Questions About the Accuracy of Attorney Time-Keeping Data

Use of General Category

We received data from the Deputy Time Tracking system for hours tracked between June 1, 1998 and December 31, 2005. We sorted the data by matter category and found that attorneys were logging a significant portion of their hours as GCA. This is a category that does not provide the clients or Civil Division management with any information about the specific case or issue the attorneys worked on. Although hours logged as GCA are associated with a particular agency, GCA is the only category

Significant Amount of

Time Not Allocated to Specific Cases

that does not require attorneys to indicate a specific matter name. Civil Division management explained to us that they have been working to decrease the number of hours tracked as GCA, and our analysis shows that the division has made progress in reducing the amount of time logged in this general category.

In the 12-month periods ending in May of 2003, 2004, and 2005, attorneys tracked respectively 34 percent, 33 percent, and 25 percent of their hours as GCA. In the six-month period between June and December of 2005, the most recent time period for which we have data, the percentage of time logged as GCA was reduced to 22 percent.

Although the Civil Division has shown some success in reducing the number of hours tracked as GCA, deputies are still logging over 20 percent of their time in this general category. The Civil Division's billing model is designed such that it bases charges on actual services rendered. However, if attorneys do not track details about how they spend their time, clients cannot know what services they received for the charges billed.

Attorneys Not Logging All of Their Time

Some Attorneys Not Logging All of Their Time

When we summarized the time tracking data by deputy, we found that historically a number of deputies were not tracking the minimum number of hours equivalent to working full time (i.e., 35 hours per week) for one year. After excluding individuals who worked only part of the year or worked only part-time during the year, we found that in the 12-month periods ending in May of 2003, 2004, and 2005, the percentage of attorneys who did not log the minimum number of hours was 38 percent, 50 percent, and 44 percent respectively. When we analyzed data from the six-month period between June and December of 2005, we saw a dramatic improvement, with only 2 percent of attorneys not entering the minimum number of hours.

Civil Division staff reported to us that they have been working to improve the completeness of the time data, and the data do show a very positive change in the number of hours tracked by each attorney. It appears from the data that attorneys are now tracking the actual hours they work, and in some cases attorneys are working hours far in excess of the minimum. The data for June through December 2005 show that, on average, attorneys are working about 44 hours per week, or 25 percent more than the minimum number of hours required of county employees.

Improvements to the Time Tracking Data

Civil Division Is Working to Improve Time-Keeping Data

Because the charges to clients are calculated using the data in the Deputy Time Tracking system, the billing model has integrity only if the data are complete and accurate. If attorneys do not log all of their time, and do not log their time to meaningful categories, clients cannot have confidence that the charges they receive are valid.

Civil Division management reports that they are continuing their efforts to increase both the accuracy and the completeness of the data. Staff members are currently revising the time tracking forms. They are better defining the categories and adding more specific matter names so attorneys can more easily identify the appropriate category for their time, and they are adding totals to the forms so that deputies can perform their own quality control over the completeness of data they enter. The Civil Division has also created a policy that requires that attorneys log no more than five hours per client each month as GCA. These efforts are positive; we encourage the Civil Division to continue to monitor their progress.

RECOMMENDATION 4 The Civil Division should continue its efforts to ensure deputies

accurately track all of their hours and to reduce usage of the General Client Advising category.

Analysis of Deputy Time Data

Time-Keeping Data Could Be Used for Other Purposes

Civil Division staff members explained to us that the deputy time data is used only for billing purposes. It is not reviewed or analyzed by Civil Division section heads or management as a tool for assessing productivity or workload. Once the Civil Division ensures deputies are tracking all of their hours and are tracking their hours in meaningful categories, division management could use the time data both as a management tool and as a way to demonstrate changes in workload.

Under the Civil Division's new time-keeping procedure, the deputy time data will include detailed information about the amount of time each attorney works on each case or specific project. Civil Division management could evaluate this information to assess individual productivity and areas in which new deputies may need additional training or assistance. Moreover, they could use the data as a tool to assist in resource allocation between the sections and to develop a system of weights for their caseload.

Additionally, in conjunction with good caseload data, the deputy time data could give Civil Division management the information necessary to support requests for additional resources. Division management reported to us that deputy workload is high and demand is increasing, and several of the division's clients indicated this as well. However, we were not able to document this increase in workload with the limited data available. By tracking deputy time data, Civil Division management can demonstrate the level at which current staff are working and the impact of changes in the caseload. For example, the division

could document the hours required to respond to the growing number of public disclosure requests and the necessary shift of resources from other areas.

RECOMMENDATION 5

The division should analyze deputy time data as a management tool to allocate resources and assess both individual productivity and division workload.

Paper Time Tracking System

Civil Division deputies log their time at the end of each month. Most deputies use a paper form created for them by the Civil Division administrative staff; others enter their time into an Excel spreadsheet and then print a copy. The deputies then submit their paper forms to an administrative staff member who enters the data into an Access database using an electronic form. The staff member responsible for compiling the deputy time tracking forms estimated that she spends about 20 hours each month collecting and entering time data.

Opportunities to Streamline Time-Keeping System

As we mentioned above, the Civil Division is working to improve the forms used to track deputy time. For example, they are adding more categories and requiring that deputies assign a matter name to more of their work. The division should also consider streamlining the entry of data by developing a process through which the deputies enter their time directly into the database. Using an electronic form, which could be similar to that currently used by the individual entering hours, the deputies could enter their own time. In addition to reducing the amount of administrative resources necessary to re-enter time data, an automated system would allow deputies to enter their time more frequently, and thus encourage more accurate time tracking. Additionally, the Civil Division could create a system of electronic

reminders to alert the deputies of the deadline for entering time, similar to the systems currently used regarding legal deadlines and schedules.

RECOMMENDATION 6 The Civil Division should consider implementing an automated time management system in which the deputies would track and submit their hours electronically.

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4 CONTRACTING WITH OUTSIDE COUNSEL

Chapter Summary

As part of our review, we assessed the Civil Division's policies and procedures for contracting with outside counsel. We found that, although the division has a procedure to ensure the selection process is competitive, the degree to which attorneys follow this procedure varies from case to case. Additionally, deputies do not always document the factors used to select a firm, the terms of the contracts can vary widely, and deputies do not always document amendments to a contract when the initial terms change or an extension is needed. We recommend that the Civil Division improve its contracting procedures, and we recognize that Civil Division management is already working to address these findings.

Contracting Practices

The Civil Division contracts with private law firms when the client requires special expertise not found within the division, when the size, complexity or urgency of a project requires additional resources, when handling the case internally would create a conflict of interest under the rules of professional responsibility, and when requested by an elected official with the specific approval of the prosecuting attorney. In 2005, the Civil Division had 72 open contracts with outside counsel and paid about $4.2 million to these attorneys or firms. These numbers do not include cases in which either an executive agency directly contracted with a private firm (e.g., when the county hires outside counsel to give a legal opinion regarding the issuance of bonds) or when the opposing party was required to pay the county's legal fees.

As part of our audit survey, we reviewed eight contracts with outside counsel to assess the Civil Division's procedures for selecting and contracting with private counsel.

We also asked for specific documentation of contract monitoring but were not provided with any documents containing such information due to protections afforded to attorney-client work products. Civil Division management explained to us, however, that deputies work closely with outside counsel in order to monitor their work and also to learn from their expertise. We were not able to verify this with the documents that were made available to us.

Counsel Selection

Civil Division Is Not Subject to County Procurement Process...

The Civil Division does not follow the county's procurement process when contracting for legal counsel. Revised Code of Washington (RCW) 36.27.040 states that the prosecuting attorney may appoint special deputy prosecuting attorneys on a contract or fee basis. Special deputy prosecuting attorneys work on behalf of the Prosecuting Attorney; however, their authority is limited to the purposes specified in a written agreement with the county. According to the Civil Division, RCW 36.27.040 allows the PAO to contract for special deputy prosecuting attorneys independently of the county's procurement process. Thus, the division has its own internal policy and procedure to ensure the fair and expeditious selection of contractors.

...But Has Procurement Policies and Procedures in Place

The Civil Division's procedure for selecting outside legal counsel is not unlike the county's procurement process, as it includes steps to ensure outside counsel is necessary and the selection process is competitive. The procedure includes documentation of the need for outside counsel, development of criteria for evaluating proposals, and identification of firms or attorneys with the appropriate expertise and reputation. The procedure

requires that a selection committee review proposals, score them according to the established criteria, and forward its recommendation to the Prosecuting Attorney, who ultimately selects the firm or attorney.

Sometimes Documentation Is Lacking That the Division's Procurement Procedure Is Being Followed

Although the Civil Division has developed a procedure to ensure a competitive selection process, the division follows this procedure only about half the time. In over half the files we reviewed, we found that the division does not always contact more than one firm or advertise the need for counsel. We found the division frequently accelerates the selection process and deputies do not always document the need for a quick decision or the reason for not soliciting proposals.

When we discussed our findings with Civil Division management, they confirmed that the division is able to follow the internal procedure only about half the time. They try to follow the procedure as often as possible, but, they explained, there are several situations in which it is either not possible or not efficient to follow strictly their internal procedure.

In some cases, the Civil Division always uses the same attorney to handle a particular type of case, such as inquests, as this ensures consistency and expertise in the issues specific to this kind of work. In another case in our review, the Civil Division contacted only one firm because the county was a co-defendant and received a significant discount when the division chose to use the same counsel as the other party. In one case, the Civil Division contacted a number of firms; however, there was no documentation of the evaluation process in the files. The deputy responsible for this case explained that the division was given only a day to select outside counsel. The Civil Division chief identified a number of firms using resumes on file and past experience. She contacted the firms to determine availability and

price, and she forwarded a short list of options to the prosecuting attorney for immediate selection.

When we discussed these irregularities with the deputies, the deputies were able to explain and support their decision to expedite or condense the selection process. However, in order to ensure that all selection decisions are fair and sound, the Civil Division should revise its procedure to incorporate the need for flexibility and quick decisions. Additionally, the division should require deputies to clearly document and support any decision to forgo any step of the procedure.

Contract Terms

Some Contracts for Outside Counsel Are Open-Ended

We also saw wide variances in the terms documented in the contracts with outside firms. In some cases the contract between the Civil Division and the firm specified both an hourly rate and a maximum total amount; in others only the hourly rate was specified. In one case, the contract included a not-to-exceed amount but the firm was actually paid much higher amounts. In three cases, the contract included a clear and defined scope of the work to be provided; in five of the cases we reviewed, the scope of work was described in general terms such as “provide legal counsel” in a particular case. Additionally, we saw that when work continued past the initial contract period, as frequently happens, no additional requirements or contract amendments were agreed upon.

We discussed these variances with the chief and the deputy chief of the Civil Division who explained that the division does not have a single way of contracting for counsel. Some deputies create detailed contracts; in other cases, the direction of the case is difficult to predict and it would not be efficient to draft a restrictive scope of work or budget when the work necessary may change dramatically. Although we recognize the need for flexibility, it is

important for both the county and the private firms that all agreements are documented as clearly as possible.

Civil Division Improving Procedures for Procuring and Contracting With Outside Counsel

In response to our findings, the Civil Division is already improving their procedures for contracting with outside counsel. They have added to their policy a step to document the reason for not using a competitive process when it is not prudent to do so, and they have created a checklist to ensure all steps in the policy are addressed. They have also added to their policy the expectation that all modifications of the initial agreement should be documented. We recommend that the Civil Division continue its efforts to improve the documentation of contractor selection and expectations of outside counsel.

RECOMMENDATION 7

The Civil Division should revise its policies and procedures related to contractor selection and oversight to ensure that decisions are fair and documented.

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5 CUSTOMER SATISFACTION

A Majority of Civil Division Customers Are Very Satisfied

Chapter Summary

In this chapter, we discuss our survey of 28 individuals from 10 agencies in both the executive and legislative branches. We found a wide variety of opinions among customers. A majority of the customers we interviewed were very satisfied with the services they receive from the Civil Division, and most thought services were improving; however, some customers were less satisfied. Some clients reported that their attorneys did not have sufficient expertise, that attorneys sometimes offer inconsistent advice, and that some attorneys are too risk averse. Additionally, we heard from several clients that they would like to receive more proactive advising from the Civil Division. The Civil Division conducted its own customer satisfaction survey in 2005, and we recommend that the Civil Division regularly survey its customers and track the results.

Client Survey

In an effort to assess customer satisfaction with Civil Division services, we interviewed 28 individuals from 10 King County agencies. We met with representatives from both the executive and legislative branches of county government and from both current expense funded and non-current expense funded agencies. At some agencies, we met with the executive director or chief administrative officer, but at others we met with section supervisors and legal advisors. On the legislative side, we met with both councilmembers and council staff members.

We found a wide range in the level of satisfaction with Civil Division services; however, we consistently were told about a number of things the Civil Division is doing well. Specifically,

Some Customers Have Concerns

clients indicated that Civil Division deputies are available and responsive to their clients' calls, successfully coordinate legal services for their clients, and consistently meet deadlines and schedules. Clients feel they receive sufficient updates on open cases and issues and have ample opportunities to discuss their cases and options. Most clients reported receiving well prepared responses to their questions and concerns, and several said that their attorneys were experts in the legal field relevant to the client's business. The Land Use Section of the Civil Division consistently received praise from its clients.

Over half of the individuals we interviewed reported that they were very satisfied with the services they received from the Civil Division. These clients emphasized how much they appreciate access to senior deputies and Civil Division management, regular "check-in" meetings with their deputies, and long-term relationships with the same individual attorneys. Several agencies underscored the importance of working with the same attorney for several years—it allows the attorney to develop an expertise in both the legal specialty and in the business needs of the agency. Clients who have worked with the same attorney for a long time reported that their deputies helped them effectively strategize and proactively address potential liabilities.

Those clients that were not as satisfied with Civil Division services identified a number of concerns related to the expertise and experience of attorneys, the quality and consistency of legal advice, the perception that some sections of the Civil Division are too risk averse, and the need for more analysis of legal trends and proactive advising.

Expertise and Experience: About half of the individuals we spoke with reported that they need a deputy with more experience and expertise in a particular legal field. Some clients

Some Customers Concerned That Attorneys Do Not Have Sufficient Expertise, or That Quality and Consistency of Advice Varies by Attorney

reported that attorneys did not remain in their agency's section long enough to develop the expertise needed. A few reported that their attorneys were very good at handling straightforward and uncomplicated issues, but the clients had concerns about their attorneys' abilities when they needed advice about a complicated case or a lawsuit with high stakes.

Quality and Consistency: Clients reported that the level of analysis and preparation varies by attorney. Several clients said that they would like to hear options or alternatives when a deputy determines that a particular proposal is not acceptable. Three clients reported receiving different advice from different attorneys on the same question, indicating a need for increased sharing of information within sections or increased quality control. Legislative clients expressed concerns that they cannot always determine whether a piece of legislation has received a formal legal review; and they suggested the Civil Division develop a tool for communicating the level of review completed and the changes recommended for each piece of legislation sent before the council.

Several Clients Thought Civil Division Attorneys Are Too Risk Averse

Risk Averse: Many clients indicated that their attorneys too frequently focus on the negative aspects of a proposal without considering a proposal's strengths. Additionally, some clients expressed the concern that the employment section is generally too eager to settle cases. Clients reported that this tendency to settle is decreasing with urging from the County Executive.

Proactive Advice: Clients reported that they would like the Civil Division to do more analysis and provide advice on developments in the law and trends in claims and lawsuits. Many clients said they receive no proactive advice on ways to prevent future lawsuits.

Some clients explained that their level of satisfaction varies by attorney or section, and almost every client said that there have been significant improvements in service over the past few years. Frequently, those that voiced criticisms also commented that attorney workload seems to be very high and they worried that perhaps the Civil Division simply does not have the resources necessary to offer the proactive advice and sophisticated defense sometimes needed by the county.

Civil Division's Client Survey

Civil Division Conducts Client Surveys

The Civil Division conducted its own client survey in early 2005. The chief civil deputy and assistant chief civil deputy met with executive department directors, key elected officials, councilmembers, and council staff. In April 2005, the chief civil deputy sent a memo to all Civil Division deputies and staff summarizing clients' comments and identifying areas in which the division could improve. This memo describes many of the same issues we found during our survey.

Civil Division Management Is Responsive To Customer Concerns

We found that Civil Division management was very responsive to concerns and complaints voiced by the agencies, and we recommend the Civil Division continue to survey its clients to learn how best to meet their needs. We suggest that they survey individuals throughout an organization, rather than just individuals at the director level. We recognize that these sorts of surveys are time consuming, and the Civil Division may consider surveying a sample of their clients each year if they cannot talk to every client annually. Additionally, we recommend that the division track feedback by client and deputy to determine the best ways to improve services.

RECOMMENDATION 8 The Civil Division should regularly survey its clients and track the feedback it receives.

Potential for Conflict in Representing Both Executive and Legislative Branches

Civil Division Attorneys Working With Executive Branch; May Also Advise the Council on the Same Issue…

We repeatedly heard about the potential for conflict created when a single entity provides legal advice to both the executive and legislative branches of county government. Pursuant to state law, the prosecuting attorney is the legal advisor to the county, and the Civil Division is charged with serving both executive and legislative agencies. This means that Civil Division deputies are frequently in the position of advising the King County Council on legislation they may have helped an executive agency draft.

This May Create Potential for Conflict

Deputies sometimes work very closely with their executive branch clients drafting proposals and legislation. When the results of their efforts go before the council for consideration, the deputy is frequently asked questions that require unbiased advice about the risks and advantages of a proposal. Some of the legislative clients we surveyed reported that they receive unbiased advice from their attorneys and do not feel that the deputies advocate for the executive agency's position when advising the council on a piece of legislation or a proposal. However, the majority of the legislative clients we spoke with reported to us that the Civil Division's success in giving unbiased advice varies widely by attorney, issue, and the history of a particular proposal.

We were told by a number of legislative clients that they sometimes have to convince a deputy that their questions and concerns are valid and that the council is a primary client. Some of these clients thought the Civil Division should dedicate an attorney to serve only the council; another suggested assigning

two deputies to each issue, one to advise the executive agency and another to advise the council. As one legislative client explained, however, the Civil Division is already handling a high workload, and it would take an attorney some time to learn enough about each proposal to assist the council effectively.

Civil Division Is Working to Improve Communication With Legislative Clients

The Civil Division is aware of this potential for conflict and is working to improve the services it provides to its legislative clients. Most legislative clients acknowledged that services have improved over the past couple years. Senior deputies from the Civil Division meet with council staff every other week, and the Civil Division provides the council with a quarterly report on all current litigation. Both Civil Division management and council staff reported to us that the relationship between the deputies, the executive agency, and the council works best when all three parties are brought together early on a project.

6 PERFORMANCE MEASUREMENT

Chapter Summary

In this chapter, we assess whether the Civil Division's performance measurement system generates useful information for measuring and improving the performance of the division. In general, we found that while the Civil Division makes efforts to solicit input from its customers concerning its performance, and acts upon suggestions received, the overall value of the system is very limited.

Characteristics of an Effective Performance Measurement System

Characteristics of an effective performance measurement system include:

- Goals that relate to the agency's strategic plan.
- Objectives for improving performance.
- Targets for performance which are consistent with goals and objectives.
- Performance measures that include measures of efficiency and outcomes (in addition to inputs and outputs).
- Benchmarks for comparing performance.
- Performance measurement information is actually used by management to monitor and improve performance.

Civil Division's Performance Measurement System

Exhibit D provides the goals and performance measures of the Civil Division's performance measurement system.

EXHIBIT D
Civil Division Performance Measures

Goal	Measures
Excellence	• Met annually with department directors and other primary clients to obtain performance reviews. • Communicated results of annual client meetings to sections and adjusted services to meet client needs.
Teamwork	• Had each section meet at least 10 times.
A Great Place to Work	• Conducted meaningful annual job performance evaluations. • Presented 8-10 in house Continuing Legal Education (CLE) credits.
Efficiency	• Assessed whether division operated within its budget.

SOURCE: Documents provided by the Civil Division

Civil Division's Performance Measurement System Does Little to Measure Performance

We find that this system meets few of the characteristics of an effective performance measurement system described previously. For example, the performance measures themselves generally are not related to the agency's goals, there are no targets for performance, there are no benchmarks for comparing performance, and as a whole, the measures and system provide little information about whether the Civil Division is operating efficiently or effectively. Nor does it have the capability of providing useful information for management to monitor and improve performance.

We acknowledge the value in the Civil Division regularly communicating with its customers about its performance, and using the information received to address problems. From our discussions with Civil Division customers, we believe that management of the Civil Division is listening to its customers and taking actions to address their concerns. We consider communications with customers to be a strength of the Civil Division. Nevertheless, even in this area, improvements could be made. While efforts are made to communicate with customers on a regular basis, customer satisfaction is not actually measured (e.g., 80 percent of customers think that the

Civil Division is doing a good job in taking proactive measures to reduce liability claims). Without actual measurement, there is little information to determine whether customer satisfaction is improving, getting worse, or staying about the same.

An Example Where Data Could Be Monitored to Track and Improve Performance

Employment Claims Are One Example of How Data Might Be Used to Measure Performance

An area of Civil Division performance where data is available for monitoring and improving performance is in the area of employment law. The Office of Risk Management, of the Department Executive Services, monitors the costs of defending and the cost of settlements or judgments of tort claims. Many of these claims are filed by county employees alleging discrimination or harassment in the workplace. In reviewing the Risk Management data, we noted there are many such claims filed each year, although a significant amount of these claims are resolved without payment. A significant amount of expense is incurred in defending and paying for settlements and judgments on these claims.

In addition to employment-related tort claims filed against the county, we are also aware of several wage and benefit-related class actions filed against the county by county employees in the last several years. Many of these class actions involve issues related to wages and benefits. These types of cases often involve settlements or judgments in the millions of dollars. We found that while Civil Division attorneys may have records of payouts associated with individual cases, there is no centralized system for tracking how much has been paid out in employment-related settlements or judgments of class actions (since these are not tort claims, they are not entered into Risk Management's database).

Further, in our discussions with Civil Division customers, we were told on several occasions that the Civil Division is too willing to settle such cases, although the decision to settle or not is made by the client agency. However, we were also told by these same customers that the county's approach more recently has been to be more aggressive in contesting employment claims.

We are also aware of efforts being made by the Civil Division to try to reduce liability and control costs. For example, the Employment Law Section provides an annual employment law seminar to executive, legislative, and judicial clients. Section lawyers also brief clients on significant developments in case law and provide training on a variety of employment topics as requested.

The section also meets regularly with a number of clients (Department of Adult and Juvenile Detention, Sheriff's Office, Department of Transportation, and the Office of Safety and Claims Management) to provide legal advice on employment matters. And with respect to wage and benefit-related class actions, the county has reviewed its practices and made systemic changes which are included in the settlement agreements and, where appropriate, in the King County Code, to minimize the risk of future repeat litigation.

While efforts are being made to reduce exposure to employment related claims, there continues to be a number of such claims filed against the county each year. Better utilization of the data maintained by the Office of Risk Management might provide an opportunity for measuring and improving performance. For example, performance data could include information on whether more claims are actually being contested, the proportion of claims that are resolved without payment, and whether efforts to reduce liability have been effective.

Measures in Use by Other Jurisdictions

We reviewed the performance measurement reports of several different civil law functions at various levels (state, county, and city) and found several examples of meaningful measures of performance.

Other Jurisdictions Have More Useful Performance Measures

For example, the Oregon Department of Justice monitors (among other things):

- Percent of legal cases in which the state's position is upheld
- Percent of appropriate litigation resolved through settlement
- Amount of monies recovered by the state divided by the cost of recovery
- Amount of time from receipt of contracting document to first substantive response to client
- Percent of state agencies responding that rank the legal services received as good to excellent

The City Attorney's Office of the City of Vancouver monitors (among other things):

- Legal services cost per hour as a percent of outside counsel
- Percent of litigated cases that settle within the estimated budget
- Percent of clients reporting that document preparation was timely
- Percent of clients reporting that document preparation met client's objectives

- Percent of clients reporting that advice received was clear and relevant
- Internal client satisfaction for legal civil support

The City of Kent, Washington, monitors (among other things):

- Percent of litigated claims closed resulting in no monetary payout
- Dollar amount paid out on litigated claims
- Average amount of formal work requests per attorney
- Number of legal claims and lawsuits filed

Washington State Attorney General's Office Makes Greater Efforts to Measure Performance

We also spoke with a representative from the Washington State Attorney General's Office relating to its performance measurement system. The Attorney General's Office developed its current performance measurement system three years ago and is still refining and adjusting its measures and way of presenting them. As part of its performance measurement system, the office collects and reports data related to client satisfaction, workload, lawsuit outcomes, and the use of outside counsel, in addition to many other categories.

The representative from the Attorney General's Office emphasized that it can be difficult to track performance using data alone; this is why the agency always includes in its presentation of results a narrative describing the analysis and any emerging trends. The presentation template includes four questions: (1) What goal is this performance measure linked to?; (2) How does this performance measure support the goal?; (3) Compare and explain the target and the actual result for this measure; and (4) What needs to be done as a result of this analysis?

Using this format of data and narrative can provide a civil legal office with an opportunity both to strategize to improve and also to document trends and developments affecting the office. For example, data may show an increase in losses over the course of a year; however, the office may actually have been successful nonetheless at defending their clients and minimizing losses. This can be explained in a narrative component that helps complete the story told by the data.

Overall Conclusions and Recommendation Relating to Performance Measurement

The Civil Division's performance measurement system has substantial limitations to its usefulness. Measuring performance of a civil law function is difficult, and we do not consider the measures from any of the jurisdictions we reviewed to be a benchmark for a comprehensive performance measurement system. Nevertheless, we have provided an example of how performance information might be monitored and used to measure and improve performance of employment law services, and several examples of measures used in other civil law offices that we consider to be more useful than the Civil Division's measures. However, the Civil Division should not simply adopt the performance measures that we have provided as examples. It should give thought to what measures are most relevant to its performance, and how the performance information it decides to collect can be used to monitor and improve performance.

RECOMMENDATION 9 The Civil Division should improve its performance measurement system by identifying measures that are related to its goals and that actually measure performance. It should also set targets for performance, identify benchmarks for performance, and use performance information to monitor and improve performance.

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APPENDICES

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LIST OF RECOMMENDATIONS & IMPLEMENTATION SCHEDULE

Recommendation 1:
The Civil Division should track county agencies' expenditures for outside counsel.

Implementation Date:
The Civil Division indicates that it has already implemented the recommendation.

Estimate of Impact:
Tracking expenditures for outside counsel will enable the county to monitor the full cost of legal services, and will assist the Civil Division in determining the optimal mix of in-house versus outside counsel.

Recommendation 2:
The Civil Division should make greater efforts to measure its workload, including tracking outputs in addition to inputs, and should attempt to link its workload to its budget.

Implementation Date:
August 2007

Estimate of Impact:
Measuring and monitoring workload and comparing workload to budget provides better information for managers to allocate resources.

Recommendation 3:
The Civil Division should investigate whether the county is utilizing an optimal mix of in-house versus outside counsel.

Implementation Date:
August 2007

Estimate of Impact:
Employing the optimal mix of outside versus in-house counsel could potentially reduce total county expenditures for legal services.

Recommendation 4:
The Civil Division should continue its efforts to ensure deputies accurately track all of their hours and to reduce the usage of the General Client Advising category.

Implementation Date:
The PAO has indicated that this recommendation has already been implemented.

Estimate of Impact:
Improved attorney time-keeping data will improve the accuracy of the client billing model, and provide better information to management for monitoring attorney productivity and allocating attorney resources.

LIST OF RECOMMENDATIONS & IMPLEMENTATION SCHEDULE (Continued)

Recommendation 5:
The Civil Division should analyze deputy time data as a management tool to allocate resources and assess both individual productivity and division workload.

Implementation Date:
August 2007

Estimate of Impact:
Analysis of attorney time-keeping data will provide better information to management for monitoring attorney productivity and allocating attorney resources.

Recommendation 6:
The Civil Division should consider implementing an automated time management system in which the deputies would track and submit their hours electronically.

Implementation Date:
August 2007

Estimated Impact:
An automated time management system would save costs by reducing duplication of effort, and could potentially improve the accuracy of the time management data.

Recommendation 7:
The Civil Division should revise its policies and procedures related to contractor selection and oversight to ensure that the decision is fair and documented.

Implementation Date:
December 2006

Estimate of Impact:
Better documentation of the contractor selection process will provide greater assurance that the process is fair and accountable.

Recommendation 8:
The Civil Division should regularly survey its customers and track the feedback it receives.

Implementation Date:
Ongoing

Estimated Impact:
Surveying customers provides performance information about customer satisfaction with services received. Tracking feedback will provide information about trends in customer satisfaction.

LIST OF RECOMMENDATIONS & IMPLEMENTATION SCHEDULE (Continued)

Recommendation 9:
The Civil Division should improve its performance measurement system by identifying measures that are related to its goals and that actually measure performance. It should also set targets for performance, identify benchmarks for performance, and use performance information to monitor and improve performance.

Implementation Date:
August 2007

Estimated Impact:
The ability to use performance information to improve efficiency and effectiveness.

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PROSECUTING ATTORNEY'S RESPONSE

OFFICE OF THE PROSECUTING ATTORNEY
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CIVIL DIVISION

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18 July 2006

RECEIVED
JUL 20 2006
KING COUNTY AUDITOR

MEMORANDUM

TO: Cheryle Broom, Auditor

FROM: Sally G. Bagshaw, Chief Civil Deputy

SUBJECT: Performance Audit Survey

We appreciate the time and effort taken by the Auditor to review procedures utilized by the King County Prosecuting Attorney's Office Civil Division. As we discussed with you during your review, we welcome opportunities to improve the service we provide to our clients. We embrace your suggestions for improvement.

In addition to the summarized responses set forth in the chart below, two general matters deserve mention. First, we are gratified that the finding of the Auditor's survey of our clients corresponds to the findings of our own client survey conducted in 2005. As noted, a majority of our clients are very satisfied with the legal services provided by the Civil Division, and we continually work with all our clients to improve the services we provide. Like the Auditor, we received some constructive suggestions for change from our clients last year. It is further rewarding to learn that most of our clients acknowledge our services are continuing to improve.

Second, we are committed to investigating ways to develop a meaningful performance measurement system to evaluate attorney workload and productivity. We commend you for suggesting that we develop such a system to measure performance and look forward to working with you and others knowledgeable in this area to develop and implement such a system. While we agree with your conclusion that it will be challenging to develop a meaningful system for measuring the performance of a public law office, we welcome this challenge.

With these ideas in mind, we concur with your recommendations and make the following specific responses contained in the chart below.

PAO Response to Audit
July 18, 2006

Recommendation	Agency Position	Schedule for Implementation	Comments
Recommendation #1 The Civil Division should track county agencies' expenditures for outside counsel.	Concur	We currently have a centralized system for tracking expenditures for outside counsel.	We have recently created a central database to track all expenditures for outside counsel. In the past, departments who paid the bill were responsible for payments made. Civil Division attorneys review all bills submitted by outside counsel to ensure that they are reasonable and appropriate prior to their payment by client agencies; bills from outside counsel are now entered in the Civil Division database.
Recommendation #2 The Civil Division should make greater efforts to measure its workload, including tracking outputs in addition to inputs, and should attempt to link its workload to its budget.	Concur	We will continue efforts to investigate and analyze performance measures to evaluate workload.	We embrace the idea of utilizing any available tools that can help us provide better legal services to our clients. We will investigate the availability of performance measures successfully used in other public law firms that can meaningfully evaluate attorney workload and performance.
Recommendation #3 The Civil Division should investigate whether the county is utilizing the optimal mix of in-house versus outside counsel.	Concur	We have already begun to implement this recommendation.	This is a discussion that we have whenever outside legal counsel is obtained. Our objective has been and continues to be to provide legal service in house whenever practicable as this is significantly more cost effective. We have discussed in detail with the auditor that outside counsel is obtained when a specific expertise is needed or a conflict arises.
Recommendation #4 The Civil Division should continue its efforts to ensure deputies accurately track all of their hours and to reduce usage of the General Client Advising category.	Concur	We have implemented this recommendation.	For the past several years we have worked to improve our time keeping practices. Currently, time keeping within the Division produces useful information. We will continue our efforts to improve time keeping practices of the attorneys in the Civil Division.

PAO Response to Audit
July 18, 2006

Recommendation	Agency Position	Schedule for Implementation	Comments
Recommendation #5 The division should analyze deputy time data as a management tool to allocate resources and assess both individual productivity and division workload.	Concur	We currently collect accurate time data, which can be utilized to assess productivity and workload.	We agree that time data is a useful tool to allocate resources and assess productivity and workload. We wish to emphasize, however, that time data is just one of many tools that can be used for such purposes. Many other criteria including courtroom skills, training, analytical experience, client priorities and willingness and time to assume difficult assignments is considered in determining workload distribution.
Recommendation #6 The Civil Division should consider implementing an automated time management system in which the deputies would track and submit their hours electronically.	Concur	We are investigating the practicalities of automated time management with PAO information technology staff and will evaluate the effectiveness of this tool.	If an automated time management system can achieve the benefits suggested in the audit, we will implement it as soon as possible.
Recommendation #7 The Civil Division should revise its policies and procedures related to contractor selection and oversight to ensure that decision is fair and documented.	Concur	We have already begun to sharpen our practices of documenting the process for selecting outside counsel.	We agree with the auditor's conclusion that our process for selecting outside counsel is fair and appropriate to the circumstances. We also agree that our documentation of that process can be more consistent. We will centralize our practices with regard to documenting the selection and monitoring of outside counsel.
Recommendation #8 The Civil Division should regularly survey its clients and track the feedback it gets.	Concur.	We formally surveyed our clients in 2005. We informally survey clients regularly.	We will continue to regularly survey our clients and will track the feedback we receive from such surveying efforts.

PAO Response to Audit
July 18, 2006

Recommendation	Agency Position	Schedule for Implementation	Comments
Recommendation #9 The Civil Division should improve its performance measurement system by identifying measures that are related to its goals and that actually measure performance. It should also set targets for performance, identify benchmarks for performance, and use performance information to monitor and improve performance.	Concur	We will continue to investigate and analyze performance measures to monitor and improve performance.	We embrace the idea of utilizing any available tools that can help us provide better legal services to our clients. We will rigorously investigate the availability of performance measures that can meaningfully evaluate attorney performance. One method of investigation we intend to pursue is to contact other public law offices in the region and explore the performance measurement systems that they use.