

Outside Legal Counsel

Audit Report
March 1, 2017

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BACKGROUND

Orange County Public Schools' (OCPS) Legal Services Department is responsible for the legal affairs of the school district. Its stated mission is to provide high quality legal services with professionalism, integrity and respect for the community, the School Board and our employees. The department is led by the General Counsel who manages legal matters with in-house legal staff as well as with outside legal counsel. The Legal Services Department provides legal services to the OCPS School Board and district departments on a wide range of issues including construction, real estate, general liability claims, labor & employment, workers' compensation claims, district policies, procurement, and other issues.

The General Counsel analyzes each case from a cost/benefit standpoint and evaluates the magnitude of the matter and the strengths/weaknesses of staff to determine the best choice of legal provider. Like other school districts, OCPS hires outside legal service providers to handle legal work when specialized expertise is needed or when a particular matter requires knowledge from resources not available internally.

- The procurement of legal services is exempt from competitive solicitation requirement. However, in 2013 the Office of Legal Services solicited proposals for law firms to provide legal services in the areas of real estate, construction, tort, workers' compensation and labor & employment law. As a result of this process, the District selected three firms for real estate law, four firms for construction, five firms for tort, four firms for workers' compensation, and three firms for labor & employment. Three year contracts were awarded effective July, 2013. The contracts also provided for 2 one-year extensions. The Office of Legal Services has extended these contracts for one year and is in process of preparing a new RFP. Three firms used during the audit period were not selected through an RFP process. They were selected by the General Counsel to handle specific matters.
- Legal Services manages matters related to real estate, construction, labor & employment, and others directly with the outside legal firms. Legal Services receives, reviews, and approves invoices. Invoices related to cases which are not covered by insurance policies and are not related to specific capital projects are paid from the Legal Services Department budget.
- Third party claims administrator Cramer, Johnson, Wiggins and Associates (CJW) manages matters related to labor & employment, general liability, exceptional student education (ESE), and others, and receives, reviews, and approves those legal invoices. CJW Associates forwards invoices to OCPS Risk Management staff for payment. Invoices related to general liability cases or other cases which are covered by insurance policies are paid from Risk Management funds.
- Third party claims administrator United Self Insured Services (USIS) manages matters related to workers' compensation and reviews those invoices. USIS forwards invoices to Workers' Compensation staff for review and payment. The Workers' Compensation staff also reviews those invoices. Invoices related to workers' compensation are also paid from Risk Management funds.

Charts 1 and 2 below reflect a total amount of \$1,271,169 paid to outside legal counsel from January through September 2016 broken down by specialty and by department.

Chart 1

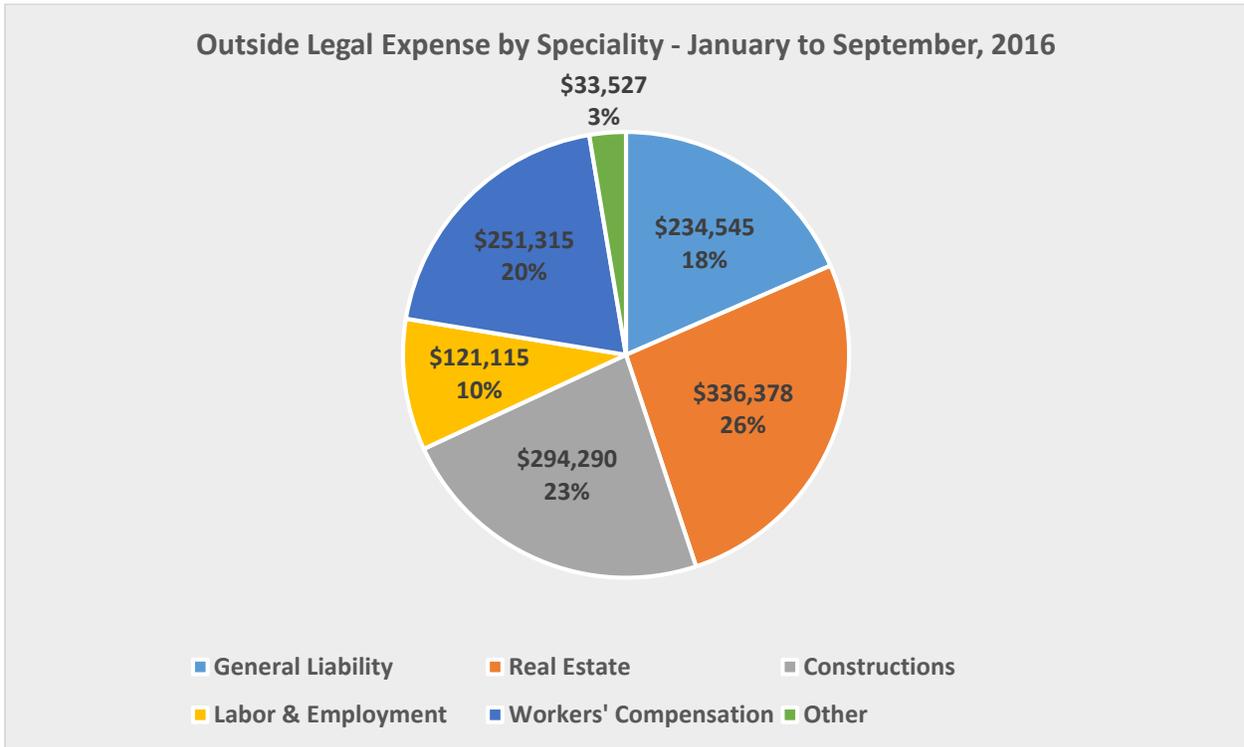
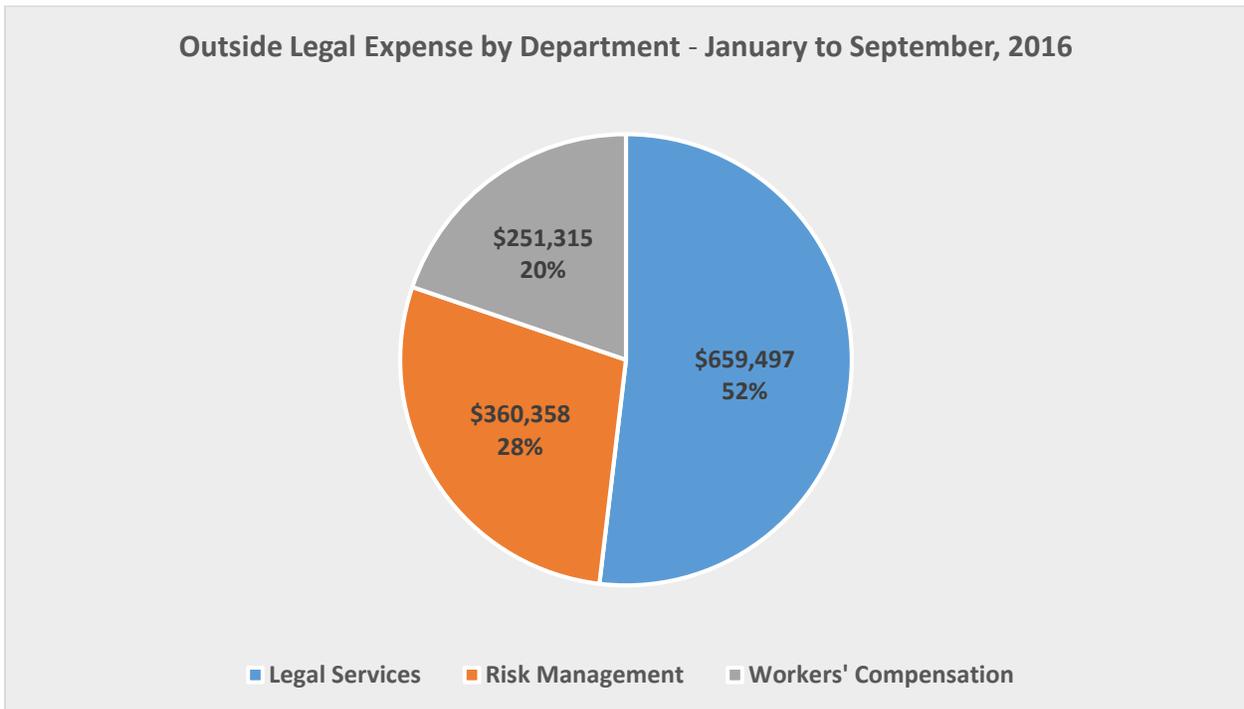


Chart 2



OBJECTIVES, SCOPE & METHODOLOGY

OBJECTIVES:

The objectives of this audit were to determine:

- whether the outside counsel program is being administered effectively and efficiently;
- whether policies and procedures have been established for the engagement, management and evaluation of outside legal counsel;
- whether contracts are being managed efficiently;
- whether outside legal counsel billings are monitored adequately to assure that OCPS is not overcharged for outside legal services; and,
- whether OCPS outside legal counsel fees/expenses and common practices are aligned with the similar industry practices.

SCOPE:

The scope of the audit included an examination of the procedures and controls over the engagement, management, and oversight of outside counsel. We reviewed outside legal expenses for the period from January 1, 2016, through September 30, 2016.

Our procedures included:

- Discussions with Legal Services, Risk Management, and Workers' Compensation staff members;
- Examination of documents, RFP, contracts, engagement letters, and invoices maintained by Legal Services, Risk Management, and Workers' Compensation;
- Examination of general ledger accounts and documents uploaded in SAP; and,
- Transmitting a brief benchmarking survey regarding outside legal counsel activities to the largest school districts in Florida, largest county governments in Florida, and selected members of the Council of Great City Schools.

METHODOLOGY:

Our audit was conducted in accordance with the *International Professional Practices Framework (IPPF)* of the Institute of Internal Auditors and included such procedures as deemed necessary to achieve the objectives. Internal Auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. We are required to note any material deficiencies in accordance with Florida Statutes and School Board Policy.

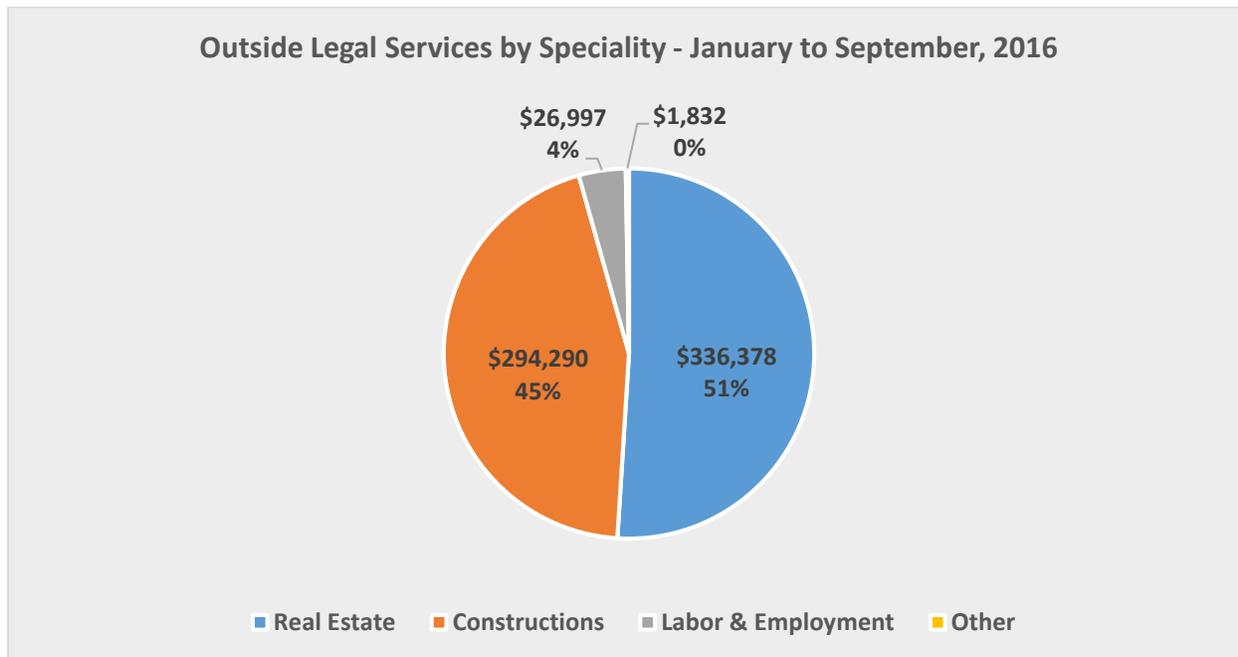
OVERALL CONCLUSION

Based on the results of our audit, we have concluded that procedures and controls over the engagement and oversight of outside legal counsel are generally effective but could be improved. We found that most of the legal invoices we tested were in compliance with their respective contracts. A few invoices were noted as exceptions. These exceptions, along with recommendations for better practices in overseeing outside legal counsel, are explained in the following sections of this report.

FINDINGS AND RECOMMENDATIONS

Legal Services Department

Chart 3



- 1) Fiscal year 2016 Excel sheet log “Totals Per Firm Per Case” for all outside legal counsel fees should be checked by someone other than the person who prepares it prior to making a report for management.**

Legal Services prepares a “Totals Per Firm Per Case” Excel sheet log and uses this log to make a report. The Excel sheet log is categorized by firm, case and month with totals. During our data analysis we noted that some cells were missed in additions formulas, and duplicate subtotals were added in the total additions formula. These errors were brought to the attention of the Sr. Specialist who promptly took steps to correct them.

The Excel sheet log prepared by the Sr. Specialist in Legal Services should be reviewed by someone other than its preparer prior to making a report for management. Legal management's monitoring, planning, and decision processes will be more effective and efficient when the source of reporting documents are accurate.

- 2) A formal selection process should be established and documented when outside legal counsel firms are not selected through an RFP.**

Three firms used during the audit period were not selected through an RFP process. They were selected by the General Counsel to handle specific matters.

The selection process for these firms was not formal, and no written evaluations were prepared to document the factors considered in their selection. One of the firms had been performing services for the district for a number of years, so its experience and past performance were known. Another was selected after email correspondence that provided information about the

firm's qualifications and experience pertinent to the engagement. The third selection was made by the General Counsel, but there was no documentation of his considerations in making this selection.

Formal documentation to support the selection of outside legal firms provides transparency to the process. Factors that could be considered and documented to provide supporting rationale for such selections include:

- selecting firms on the basis of merit
- measureable knowledge/expertise and prior experience
- pre-qualification list
- the right value for the work
- the best value to the OCPS
- positive past performances
- desired outcome
- the complexity of the engagement
- the skill level required, in-house attorney workload
- the justification for the need to hire outside counsel

Having a written formal selection process and documenting the selection of each firm for outside legal counsel improves transparency and accountability.

3) *Engagement letters should be established with each outside legal firm for which a contract is not established prior to starting services from the firm.*

Pursuant to School Board policy, Legal Services establishes a contract when a case is expected to cost more than \$50,000. Engagement letters are a good practice for smaller engagements, but they were not used consistently.

There was no contract or engagement letter with firm G. We noted in our audit of selected invoices that the firm charged the same hourly rate of \$275 for both principal attorney (6.3 hrs.) and staff attorney (7.4 hrs.). If the staff attorney hourly rate had been \$200 then \$555 was overcharged for this invoice.

Firm F (located in Tampa) also charged same hourly rate (\$200) for both principal attorney and associate attorney. The firm charged \$200 an hour for associate attorney from January to June, 2016. An engagement letter with the firm was prepared in August, 2016, after the service had begun in January, 2016. After the engagement letter was in place the firm reduced the rate charged for associate attorney to \$175 in accordance with the agreement. Approximately \$2,100 was over charged during the period reviewed by our audit. Legal Services requested and received a refund of \$2,035.50 from this firm.

We recommend that engagement letters be used routinely for cases estimated to be less than \$50,000. Engagement letters assist in documenting and confirming a firm's industry knowledge, credentials and experience, the scope of work, hourly rate, payment method, any possible conflicts, any contingency and alternative fees, and other related expenses.

4) *Engagement letters should also contain a conflict of interest clause.*

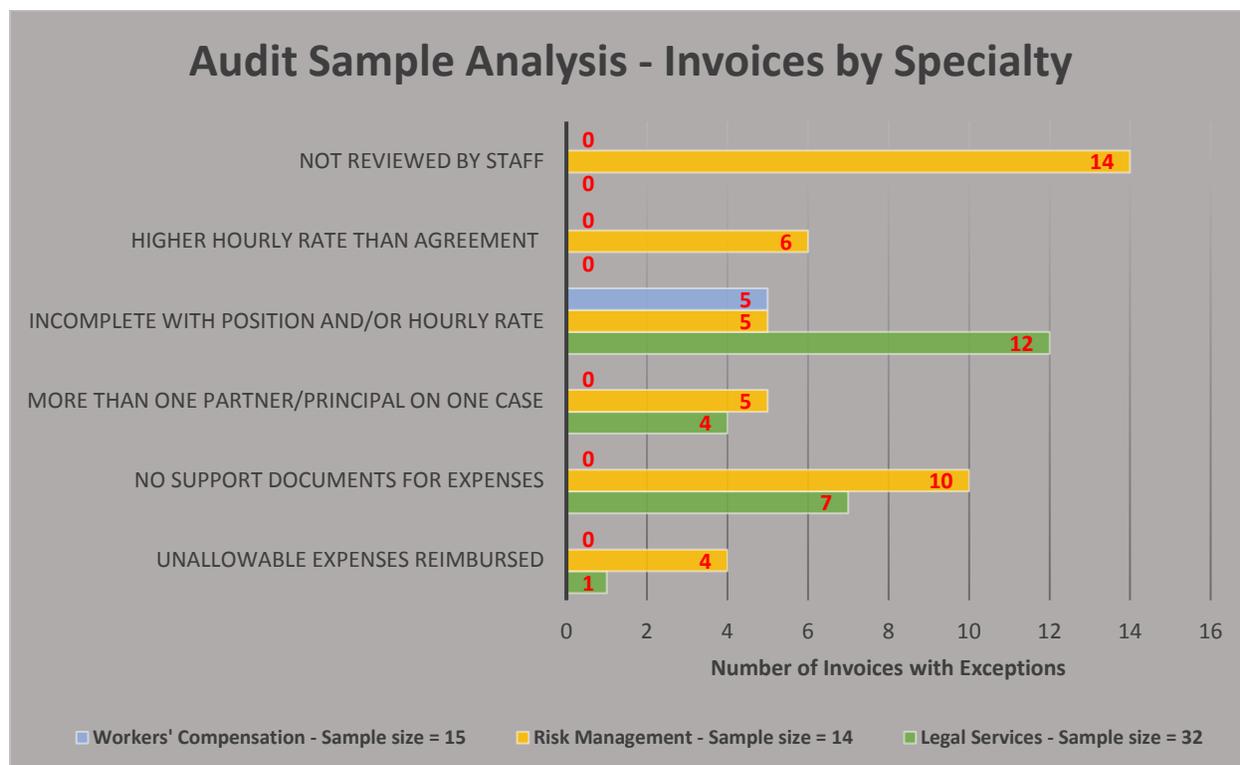
We noted that outside legal counsel contracts address conflicts of interest. However, engagement letters, which are used in place of contracts, do not address conflicts of interest.

Outside legal counsel engagement letters should have a conflicts of interest clause and describe notifications and corrective actions to be taken upon discovery of any conflicts.

Results from Review of Invoices

The next several findings detail the results of our review of a sample of invoices from outside legal firms during the audit period. A summary of our findings appears in Chart 4 below and detailed descriptions of our findings follow the chart.

Chart 4



5) A formal billing review process for outside legal counsel should be established.

All the sampled Legal Services invoices were properly stamped, dated, approved, and signed by the General Counsel, and received and approved by the Finance Department for payment. However, there are no established guidelines or formal billing review procedures regarding invoices from outside legal firms and this has caused inconsistencies in the review and documentation process. We noted billing discrepancies and exceptions from contract terms in the invoices reviewed as described below:

- a) *According to the contract, expenses related to the matters handled by the law firm shall be reimbursed by School Board, except that there shall NOT be reimbursement for any of the following, postage, long distance charges, fax transmissions, scanning and/or meals.*

Meal expense of \$64.94 was charged by firm A. (A refund has been requested.)

- b) Repetitive “*Reviewing record for petition*” task of one of matter was reported multiple times on different days by the firm F associate attorney, and he charged the hourly rate of the

principal attorney. The same task was also performed by the principal attorney. The same associate attorney also charged for “*reading other examples of petitions.*”

Such charges could reflect a situation where the outside firm’s staff is training at the district’s expense. This should be questioned and evaluated.

- c) According to the contract, *reimbursement of expenses will require submittal of receipts in support of the expenses.* No supporting documents for billed expenses were attached for seven invoices in our sample. Subsequent to our bringing this to the attention of the Legal Services Department, supporting documents for six of these seven invoices were produced.
- d) In addition, the number of copies for photocopying expenses was not stated and/or supporting documents were not attached in invoices. One invoice from the firm B charged \$221.17 as photocopy expenses without stating the number of copies or providing supporting documents. After we brought this to Legal Services’ attention, they requested a refund of \$221.17 from the firm. According to the contract, *photocopying charges will be reimbursed at the rate of ten cents (\$0.10) per page.* It is not possible to evaluate the appropriateness of the charges without knowing how many copies were made.
- e) The contract provides that *expenses over the amount of \$500 require prior authorization from the General Counsel.* We were informed that firms are obtaining pre-approval from the General Counsel, but this pre-authorization was not evident in the documents reviewed.

Based on these findings, we recommend that a formal billing review process be established and implemented. It will help staff to analyze all details that should be in invoices as well as to prevent payments that are not consistent with contract terms.

6) *Fee estimates should be requested prior to assigning a matter or implementing a contract.*

An estimate was not obtained from an expert firm hired by firm A for a particular matter. The total fees/expenses for the months of January to September, 2016, were approximately \$230,000 for that matter. This amount of fees and expenses for this matter was higher than expected by the General Counsel.

The contract stated that *firm will provide an estimation of fees upon request.* An estimate should be requested from firms prior to assigning matters. Estimates help to avoid unexpected fees and expenses as well as in budgeting. It can be challenging to budget for outside legal counsel, but estimates can help. Periodically monitoring outside legal counsel engagement costs and comparing them to budgetary projections/estimates when feasible, is a sound business practice.

7) *Post-contract evaluation processes for outside legal counsel firms should be established.*

The Legal Services Department does not formally evaluate outside legal services after a contract or case is complete. The General Counsel informed us that he reduces or eliminates future assignments to firms that don’t perform well.

The lack of formal evaluations has two effects. First, the department relies on memory and verbal communication to share information about the cost and quality of services received from outside law firms. This is not optimal because it relies on staff remaining employed at the district long-term. If an attorney with knowledge about a matter handled by outside legal counsel leaves

the district, the knowledge goes with them. If a long time has passed since the contract was complete, some of the details of the services may have been forgotten by attorneys familiar with them at the time.

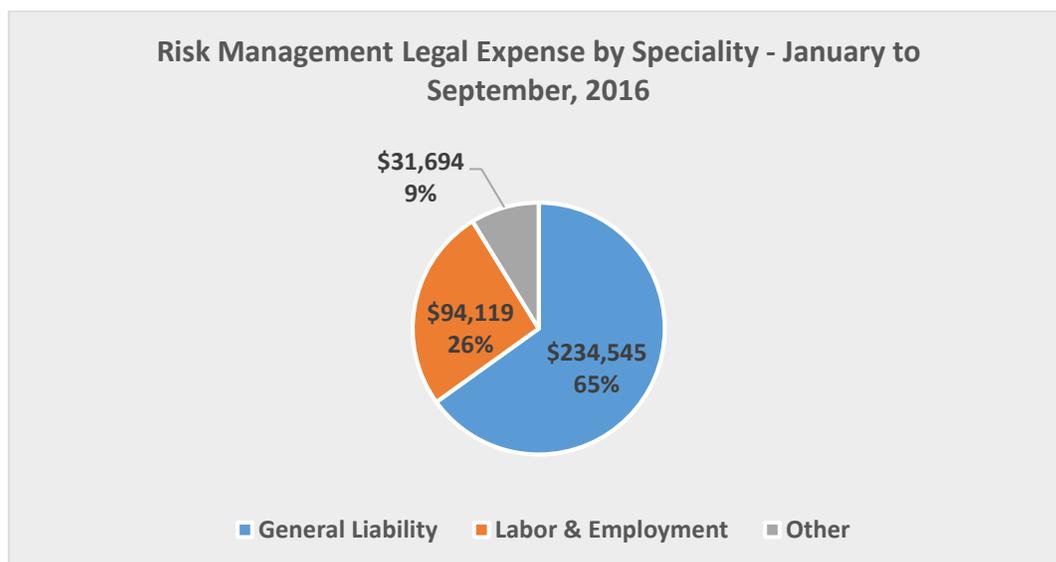
A second problem with not conducting evaluations is a potential lack of accountability. Since the Legal Services Department can appoint outside counsel without following standard procurement procedures, there is less public scrutiny of the selection. However, once a contract is complete, the department should account for the quality of the services received and their cost-effectiveness. This information could be used, at least internally, in future contract considerations.

Formal performance evaluations can provide significant information such as cost vs. overall service satisfaction, partner-to-associate-to-paralegal ratios, the time it takes to bring matters to closure, ability to use technology to reduce costs and increase efficiency, and overall level of success.

Periodic post-evaluation of outside legal counsel and reporting the results of such evaluation is a sound business practice. We recommend the Legal Services Department develop and implement a performance evaluation process for outside legal services and that they evaluations be performed at the conclusion of each contract or case. See *Appendix A* for an example of an evaluation model “*Law Firm Litigation Performance Evaluation*” prepared by the *Association of Corporate Counsel*.

Risk Management Department

Chart 5



8) Hourly rates should be reviewed and confirmed by the Risk Management staff prior to paying invoices.

Firm D’s six invoices had discrepancies between the hourly rate charged and the agreed upon rate shown in their general liability contract. According to the contract, the hourly rate for the principal/senior attorney is \$145, associates is \$120, and paralegals is \$70. However, the

hourly rates charged in invoices were \$155, \$135, and \$75, respectively with total worked hours of 121.6. A total of \$1,201 was overcharged.

Hourly rates of attorneys in invoices should be reviewed and confirmed with the agreement prior to paying invoices to prevent over-paying.

9) A formal process of reviewing outside legal counsel invoices should be established and implemented by the Risk Management Department.

The third party claims administrator, CJW Associates, reviews outside legal counsel invoices and forwards them to Risk Management staff for payment. Risk Management does not have an established review process prior to paying legal invoices.

A formal process for reviewing outside legal invoices should be established and implemented by the Risk Management staff. This will help prevent over payments, reimbursement of unallowable expenses, errors, and duplicates.

10) Other expenses or additional disbursements in invoices should be reviewed by Risk Management staff prior to paying invoices, and allowable expenses should only be reimbursed with supporting documents.

We noted exceptions among our selected sample as follows:

- a) Fax charges of \$12 were billed by firm D. The contract does not permit charging for faxes.

Local travel mileage in the amount of \$16.53 was charged by firm C.

In addition, travel time was charged by firm C and firm D as follows: \$224 for 1.6 hours at \$140 per hour, \$84 for 1.0 hour at \$140 per hour, and \$526.50 for 3.9 hours \$135 per hour without any supporting travel documents such as mileage maps or itineraries.

- b) According to the contract, *reimbursement of expenses will require submittal of receipts in support of the expenses*. The supporting documents for expenses were not attached to ten invoices. In addition, the number of copies for photocopying expenses was not stated and/or support documents were not attached in invoices. According to the contract, *photocopying charges will be reimbursed at the rate of ten cents (\$0.10) per page*. Accordingly, the invoice should indicate the number of copies made so that staff can determine that the proper amount was charged.
- c) According to the contract, *expenses over the amount of \$500 require prior authorization from the General Counsel*. Two single expenses of more than \$500 were charged by firm but there was no evidence of pre-approval.

Other expenses billed in legal invoices should be reviewed by Risk Management staff prior to paying. This will help to identify unallowable or unapproved expenses. Supporting documents should be required so that staff can determine that amounts charged are in accordance with contract terms. For clarity and easier contract administration, we also recommend that future contracts address the subject of travel time and mileage more specifically.

General Practices

11) Written Policies and Procedures should be prepared.

Written policies and procedures have not been developed and adopted by Legal Services regarding the engagement of outside legal counsel. The purpose of having policies and procedures is to establish a high degree of understanding, cooperation, efficiency, and consistency of practice among employees within an organization. Policies and procedures include roles/responsibilities of staff, and applicable regulations, standards and guidelines that are essential to carry out the organization's as well as department's mission.

Such policies and procedures promote transparency and accountability by helping to ensure that legal services are provided by qualified firms and that the costs for such services are justified, reasonably estimated, budgeted, and controlled. The policies and procedures could address:

- When and in what form to document the engagement (engagement letters, contracts, etc.)
- What type of selection process to use and what criteria to consider in making a selection of outside counsel
- How to monitor billing practices
- How to monitor performance against contracts/engagement letters
- Policies regarding conflicts of interest (definition, disclosure, etc.)
- Evaluation of outside firms' performance

12) Outside legal counsel invoices should provide complete details of time being billed, and should not be cover more than one month time period.

Several invoices did not state the position of each attorney or their hourly rate. Prepayment review and verification of charges is made more difficult in this situation which is contrary to the district's contracts for legal services.

To help staff to quickly confirm that amounts billed are in compliance with contract terms and evaluate the amount of time spent on a matter, outside legal counsel invoices should contain details of time charged such as name, initials, position of each attorney, hourly rate of each position, hours worked, charges of worked hours, and total charges of each time person.

We also noted that some invoices were very lengthy (for example, a bill for 3 months of services was charged in one invoice) making the review process difficult. According to the contract, *a law firm shall submit a monthly billing for each particular matter.*

13) An explanation should be made on invoices if there is more than one principal attorney working on the same matter.

We noted that, in some cases, more than one principal attorney worked on the same matter. For example, the firm H charged six principal attorneys on the same matter. Principal attorneys' hourly rates are higher than other attorneys' hourly rates. Occasionally, it may be necessary to involve more than one principal attorney if the case is large or complicated. In such cases, an explanation should be made on invoices. Requiring an explanation will help clarify the reasoning for the involvement of more than one principal attorney as well as ensure that costs managed.

14) Contract language should be clearer regarding the charging of travel time and mileage.

None of the outside legal firms' contracts addresses charging of time for travel. The General Counsel informed us that travel time is allowed for both in-county and outside county travel, but that mileage is allowed only for out-of-county travel.

We noted that some firms are charging for travel time and some are not. We recommend that this be addressed clearly in future contracts or engagement letters.

Accounts Payable

15) When entering document dates in SAP, Account Payable staff should ensure that the "Doc" date is the invoice date stated on invoices.

In SAP, we noted that the "doc" date is not always the invoice date. This can skew reports relied upon by management and staff. For data reliability, the "doc" dates in SAP should be the actual document (invoice) date. Invoice numbers should also be entered for all invoices.

Benchmarking

One of the most common methods for identifying performance criteria is benchmarking. Benchmarking compares specific performance across entities doing the same or similar work. The highest performing entity sets the benchmark - the criteria for how good performance can be.

We prepared a short benchmarking survey of six questionnaire related to the engagement of outside legal counsel for the General Counsel or Attorney or who leads the legal department, and sent requests to 31 entities including the 9 largest Florida school districts, the 8 largest Florida county governments, and 14 Council of Great City Schools member districts in an effort to obtain benchmarking information.

The benchmarking survey questions included:

- what is the percentage of expenditures for in-house and outside counsel compare to the total legal spending?;
- are they using contracts for outside legal counsel regardless of threshold?;
- do they have any limit or prohibition on billing for certain expenses, and if yes, which expenses?;
- what is the percentage of total outside legal counsel expenses in different areas and the average hourly billing rates for each area?;
- do they have a formal performance evaluation process for outside legal firms, and if yes, is it periodic or end of each matter, written or oral, and we asked if they would like to share evaluation form?; and,
- do they have established policies and procedures related to engagement, oversight, and evaluation of outside legal counsel?

As of February 9, 2017, Internal Audit had received only four completed surveys - from the Orange County Attorney's Office, Miami-Dade County Attorney's Office, Austin Independent School District, and Seattle Public Schools. Due to the lack of data, a benchmarking summary was not prepared. However, we will share the information received with the General Counsel.

We wish to thank representatives of the Legal Services, Risk Management, and Workers' Compensation Departments for their cooperation and assistance in the conduct of this audit.

Linda J. Lindsey, CPA, CGAP, Senior Director
Ms. Alpa Vyas, CIA, CRMA, Internal Auditor

Appendix A
Example Law Firm Litigation Performance Evaluation

Name of the Law Firm Being Evaluated: _____

Lead Firm Attorney(s): _____

Date of Evaluation: _____

Person Providing the Evaluation: _____

What is your evaluation of the law firm’s performance in each of these competencies? For each competency, please mark only one box in each of the two evaluation categories.		How well has the law firm demonstrated this in its performance for your company?						
		Very Poor	Poor	Fair	Average	Good	Very Good	Excellent
		1	2	3	4	5	6	7
Legal Judgment and Skills								
Makes decisions and recommendations based on accurate legal and factual analysis and good judgment	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Achieves desired legal outcomes	2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Accurately assesses the degree of legal risk in a given situation	3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Litigation Practice								
Accurately assesses the case in a timely way	4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has relationships and credibility with the local judiciary	5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p>What is your evaluation of the law firm’s performance in each of these competencies? For each competency, please mark only one box in each of the two evaluation categories.</p>	<p>How well has the law firm demonstrated this in its performance for your company?</p>							
		Very Poor	Poor	Fair	Average	Good	Very Good	Excellent
		1	2	3	4	5	6	7
Narrows the case through effective motion practice	6	<input type="checkbox"/>						
Anticipates and aggressively acts on the likely tactics of opposing counsel	7	<input type="checkbox"/>						
Demonstrates good judgment in planning and managing the case	8	<input type="checkbox"/>						
Manages discovery and document production effectively and efficiently	9	<input type="checkbox"/>						
Demonstrates effectiveness in settlement offers and negotiations	10	<input type="checkbox"/>						
Wins the cases they should win	11	<input type="checkbox"/>						
Wins the cases they shouldn’t win	12	<input type="checkbox"/>						
Makes a serious effort to contain case costs	13	<input type="checkbox"/>						
Uses technology effectively and efficiently to manage projects and budgets	14	<input type="checkbox"/>						
Leadership and Teamwork								
Demonstrates respect for the thinking and suggestions of others on the team	15	<input type="checkbox"/>						
Communicates the status of projects routinely without having to be asked	16	<input type="checkbox"/>						
Demonstrates good judgment in knowing when to challenge a client's recommendation or decision	17	<input type="checkbox"/>						

Responds promptly to a client's request for assistance	18	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
What is your evaluation of the law firm's performance in each of these competencies? For each competency, please mark only one box in each of the two evaluation categories.		How well has the law firm demonstrated this in its performance for your company?						
		Very Poor	Poor	Fair	Average	Good	Very Good	Excellent
		1	2	3	4	5	6	7
Demonstrates a real commitment to achieving needed results in a timely way	19	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall Law Firm Rating								
Your evaluation of the firm's overall performance	20	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

To what degree do you agree with the following statements?		Disagree	Somewhat Disagree	Neither Agree Nor Disagree	Somewhat Agree	Agree
The law firm's staff demonstrates consistently high quality performance	21	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I would recommend this firm to another company for major, complex cases	22	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I would recommend this firm to another company for routine cases	23	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you selected “Disagree” or “Somewhat Disagree” on the questions above, please provide a short explanation of 10-15 words.



Department / School Name	Legal Services
Administrator / Department Head	Diego "Woody" Rodriguez
Cabinet Official / Area Superintendent	Diego "Woody" Rodriguez

Exception Noted (Finding / recommendation)	Management Response (Corrective Action)	Responsible Person (Name & Title)	Expected Outcome & Completion Date What is the evidence of the corrective action?
What is? What should be?	What needs to be done?	Who needs to do it?	When will the action be completed?
<p>1) Fiscal year 2016 Excel sheet log "Totals Per Firm Per Case" for all outside legal counsel fees should be checked by someone other than the person who prepares it prior to making a report for management</p>	<p>The referred excel sheet is an internal control document used to gauge the amount of funds expended for certain outside legal services. The spreadsheet provided to Internal Audit was done so in an effort to guide them on how the Office of Legal Services ("OLS") keeps control of the approval process. In an effort to continue improving our processes Judith Flores, Sr. Specialist, Office of Legal Services (OLS) met with Cristina Kinard, Risk Management Manager, Carlos Yepes, Workers' Compensation Manager on 3/17/17 to collaborate on the collection of data and integration of data going forward.</p>	<p>Judith Flores, Senior Specialist, OLS</p>	<p>See Management Response (Corrective Action) column and attached email confirming process agreed between OLS, Risk Management and Workers' Compensation.</p>



<p>2) <i>A formal selection process should be established and documented when outside legal counsel firms are not selected through an RFP.</i></p>	<p>OLS has a selection process for those firms that are retained to handle matters that are not covered by the RFP process but has not put said process in writing. OLS will work to document said process going forward.</p>	<p>Woody Rodriguez, General Counsel</p>	<p>See management response (Corrective Action) column. Selection process will be reduced to writing by 7/1/2017.</p>
<p>3) <i>Engagement letters should be established with each outside legal firm for which a contract is not established prior to starting services from the firm.</i></p>	<p>The OLS has moved to the practice of executing contracts for any legal services with outside counsel. Engagement letters will be used sparingly as an exception and when used will be furnished to the OLS prior to starting services, if feasible.</p>	<p>Woody Rodriguez, General Counsel</p>	<p>See management response (Corrective Action) column. At this time there are no law firms performing services without written agreements. Therefore no further action is required.</p>
<p>4) <i>Engagement letters should also contain a conflict of interest clause.</i></p>	<p>OLS contracts provided to law firms contain boiler plate language that require the disclosure of conflicts of interest. In addition, all lawyers, as members of the Bar are required to disclose certain conflicts to their clients.</p>	<p>Woody Rodriguez, General Counsel</p>	<p>See management response (Corrective Action) column. The only remaining firm with an engagement letter has been provided a standard contract for services for the 2017-18 fiscal year. Said contract contains a conflict of interest provision.</p>
<p>5) <i>A formal billing review process for outside legal counsel should be established.</i></p>	<p>OLS has a formal billing review process but has not reduced said process to writing. OLS will document the process for use going forward.</p>	<p>Judith Flores, Sr. Specialist, OLS</p>	<p>See management response (Corrective Action) column. Billing review process will be reduced to writing by 7/1/2017.</p>



<p>6) <i>Fee estimates should be requested prior to assigning a matter or implementing a contract.</i></p>	<p>OLS posted a new legal services RFP on March 21st. The new contracts generated for those services may include a provision requesting law firms fee/expense estimates prior to them initiating work.</p>	<p>Judith Flores, Sr. Specialist, OLS.</p>	<p>The effectiveness of fee estimates are still being considered by the General Counsel and a draft reporting form has been prepared in the event it is implemented in conjunction with the new contracts issued for legal services. If implemented the forms would go into effect beginning 7/1/2017.</p>
<p>7) <i>Post-contract evaluation processes for outside legal counsel firms should be established.</i></p>	<p>After considering the pros and cons of this process and consulting with other districts, at this time OLS will not be putting this recommendation into practice.</p>	<p>Woody Rodriguez, General Counsel</p>	<p>See management response (Corrective Action) column.</p>
<p>11) <i>Written Policies and Procedures should be prepared.</i></p>	<p>See Management Response (Corrective Action) column to Exceptions 2, 3, 5, 6 and 7. With regards to outside legal counsel retained through a solicitation process, hiring process is depicted on the request for proposal and the contract.</p>	<p>Woody Rodriguez, General Counsel and Judith Flores, Sr. Specialist, OLS.</p>	<p>See management response (Corrective Action) column.</p>
<p>12) <i>Outside legal counsel invoices should provide complete details of time being billed, and should not cover more than one month time period.</i></p>	<p>Invoices are typically not paid without sufficient detail billing and is already addressed in the current contracts. This will be further addressed in the new contracts once firms have been selected in the RFP process. OLS also requires outside counsel further clarification when needed as indicated in the contracts. As to invoices received in which</p>	<p>Woody Rodriguez, General Counsel and Judith Flores, Sr. Specialist, OLS.</p>	<p>See management response (Corrective Action) column.</p>



	<p>the charges are for service over a month prior, OLS continuously emphasizes to outside counsel the need to comply with contractual requirement. However, once brought to their attention OCPS is limited in their legal remedies and is obligated to make payment for actual legal work performed.</p>		
<p>13) <i>An explanation should be made on invoices if there is more than one principal attorney working on the same matter.</i></p>	<p>This is addressed in the current contracts and will be addressed in the new contracts. OLS already requires outside counsel clarification when needed as indicated in the contracts. However, the use of multiple attorneys on a single matter does occur on occasion depending on the complexity of the case or matter.</p>	<p>Woody Rodriguez, General Counsel and Judith Flores, Sr. Specialist, OLS.</p>	<p>See management response (Corrective Action) column.</p>
<p>14) <i>Contract language should be clearer regarding the charging of travel time and mileage.</i></p>	<p>This is addressed in the current contracts and will be modified in the new contracts to provide greater clarity.</p>	<p>Woody Rodriguez, General Counsel and Judith Flores, Sr. Specialist, OLS.</p>	<p>See management response (Corrective Action) column.</p>

From: [Flores Ayala, Judith](#)
To: [Kinard, Christina L.](#); [Yepes, Carlos A.](#)
Cc: [Valentin, Cindy](#); [Rodriguez, Woody](#)
Subject: Collaboration on Legal Fee report spread sheet
Date: Friday, March 17, 2017 6:13:00 PM
Attachments: [Legal fee spreadsheet template.xlsx](#)

Thank you for meeting with me today. I wanted to document our collaboration agreement for auditing purposes. As discussed:

- 1- Risk Management, Workers' Compensation and Legal Services will use the same spreadsheet to log the monthly legal fees and expenses.
- 2- Risk Management will enter the monthly reports in the spreadsheet and send to Legal Services for review.
- 3- Workers' Compensation will provide the attached template to the firms for their use in report monthly legal fee and expenses.
- 4- The amounts to be reported per case will be a total amount which will include both legal fees and expenses in one figure.
- 5- Legal Services transfer Workers' Compensation reports to the spreadsheet.
- 6- Legal Services will review all entries for correctness.

Should I have missed anything, or any of you have further suggestions, please reply to this email

Thank you,

Judith Flores
Senior Specialist
Legal Services
407-317-3200 ext. 200-2928



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Department / School Name	Risk Management
Administrator / Department Head	Beth Curran, Senior Director Risk Management
Cabinet Official / Area Superintendent	Dale Kelly, CFO

Exception Noted (Finding / recommendation)	Management Response (Corrective Action)	Responsible Person (Name & Title)	Expected Outcome & Completion Date What is the evidence of the corrective action?
What is? What should be?	What needs to be done?	Who needs to do it?	When will the action be completed? (MM/YYYY)
<p>RISK MANAGEMENT</p> <p>8. Hourly rates should be reviewed and confirmed by the Risk Management staff prior to paying invoices.</p>	<p>Rates billed on invoices will be required to be reviewed upon receiving the funding request from TPA. The rates stated on the invoice will be reviewed for compliance with the rates stated within the General Liability Contract. TPA's have been requested to review invoices as they are received as well and have been provided a copy of the Fee Schedule by Law Firm from OCPS.</p>	<p>Senior Manager – General Liability</p>	<p>The action was implemented beginning with the funding request for the week of 03/02/17.</p> <p>Action to be completed 3/2017.</p>
<p>RISK MANAGEMENT</p> <p>9. A formal process of reviewing outside legal counsel invoices should be established and implemented by the Risk Management Department.</p>	<p>Upon receiving funding requests from TPA, backup for funds requested will be required. Currently, a formal process for reviewing outside legal invoices is being established and implemented by the Risk Management</p>	<p>Senior Director Risk Management Director of Risk Management Senior Manager – General Liability</p>	<p>All funding requests are required to be provided with proper documentation prior to the approval of funds being distributed. All documents are reviewed by Senior Manager – General Liability to ensure over payments are not allowed, reimbursement of unallowable expenses does not occur, errors and duplicate payments are avoided. Until procedures and documentation received from TPA is established to the expectations of OCPS, all</p>



	staff. Funding requests are being reviewed to prevent over payments, reimbursement of unallowable expenses, errors and duplicates.	Senior Manager – Financial Analyst	<p>funding requests are reviewed by the Director of Risk Management. Senior Manager – Financial Analyst provides an additional review for all fund requests to prevent over payments, errors, and duplicates prior to sending funding request approvals to Finance. (See attached work flow diagram.)</p> <p>Action to be completed 3/2017.</p>
<p>RISK MANAGEMENT</p> <p>10. Other expenses or additional disbursements in invoices should be reviewed by Risk Management staff prior to paying invoices, and allowable expenses should only be reimbursed with supporting documents.</p>	All back-up documentation for legal invoices will be reviewed upon receiving the funding request from the TPA.	Senior Manager – General Liability	<p>Senior Manager – General Liability reviews invoices for allowable expenses and will compare to the current legal counsel contracts. Invoices are reviewed for allowable expenses, submission of receipts, and unapproved expenses. All hourly rates for legal counsel will be compared to the current Fee Schedule by Law Firm schedule. Expenses over the amount of \$500 require prior authorization from General Counsel.</p> <p>Action to be completed 3/2017.</p>
<p>GENERAL PRACTICES</p> <p>11. Written Policies and Procedures should be prepared.</p>	Currently, the department of Risk Management is preparing written Policies and Procedures for reviewing all fund requests for claims/legal expense from RM funds. RM will collaborate with legal counsel to ensure that the policies and procedures written will support both departments to promote transparency and accountability regarding legal services performed for OCPS.	<p>Senior Director – Risk Management</p> <p>Director – Risk Management</p> <p>Senior Manager – General Liability</p> <p>Senior Manager – Financial Analyst</p>	<p>The Risk Management Department is currently implementing and preparing policies and procedures for legal counsel invoices and funding requests from our claims TPA. The policies and procedures will include roles/responsibilities of staff, and applicable regulations, standards and guidelines that are essential in carrying out the organization’s and department mission.</p> <p>Action to be completed 7/2017.</p>



<p>GENERAL PRACTICES</p> <p>12. Outside legal counsel invoices should provide complete details of time being billed, and should not cover more than one month time period.</p>	<p>All invoices will be required to be in compliance with contract terms and through a review process they will be evaluated on the amount of time spent on a matter.</p>	<p>Senior Manager – General Liability</p> <p>TPA</p>	<p>Outside Legal Counsel invoices are currently being reviewed by our TPA as well as RM. Details being looked at include details of time charged such as name, initials, position of each attorney, hourly rate of each position, hours worked, charges of worked hours, and total charges of each time person. Invoices billed for charges incurred for more than one month at a time will not be accepted.</p> <p>Action to be complete 3/2017.</p>
<p>GENERAL PRACTICES</p> <p>13. An explanation should be made on invoices if there is more than one principal attorney working on the same matter.</p>	<p>All invoices will be required to state the position of each attorney and if more than one principal attorney is required an explanation is to be provided.</p>	<p>Senior Manager – General Liability</p> <p>TPA</p>	<p>Outside Legal Counsel invoices are currently being reviewed by our TPA and RM. If it is necessary to involve more than one principal attorney, it will require an explanation and approval.</p> <p>Action to be complete 3/2017.</p>
<p>GENERAL PRACTICES</p> <p>14. Contract language should be clearer regarding the charging of travel time and mileage.</p>	<p>Current RFP will address the contract language for travel time and mileage.</p>	<p>Senior Manager – General Liability</p>	<p>Travel time invoiced will be reviewed and upheld to the terms of the current legal contracts. In the future, they will be reviewed to the current contract terms to ensure travel time is not being reimbursed inappropriately.</p> <p>Action to be complete 7/2017.</p>