

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Sitting/Acting as (if applicable)
Study Session Worksheet

Presentation Date: March 29, 2016 **Approx Start Time:** 9:30 a.m. **Approx Length:** 90 minutes

Presentation Title: Outside Counsel

Department: County Counsel

Presenters: Stephen Madkour, County Counsel

Other Invitees:

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

We are providing the Board with a summary of the role of county counsel as set forth in state law and the county code. Please see attached memo dated January 21, 2016.

EXECUTIVE SUMMARY:

Please see attached memo dated January 21, 2016

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? Undetermined

What is the funding source? General Fund

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
The proposal aligns with the draft version of the department's strategic goals.

- How does this item align with the County's Performance Clackamas goals?
Builds public trust through good government

LEGAL/POLICY REQUIREMENTS:

Please see attached memo dated January 21, 2016

PUBLIC/GOVERNMENTAL PARTICIPATION:

OPTIONS:

RECOMMENDATION:

Please see attached memo dated January 21, 2016

ATTACHMENTS:

Memo dated January 21, 2016



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

MEMORANDUM

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Assistants

TO: Board of County Commissioners
Don Krupp, County Administrator

FROM: Stephen L. Madkour, County Counsel

DATE: January 21, 2016

RE: Outside Counsel

As you know, recently the Sheriff's office sought to create a new position of its own in-house counsel. While I had no objection to creating a position to advise the Sheriff and his staff on policy decisions, I did protest any effort to have an individual other than an attorney from county counsel provide legal advice and representation to a county official or elected official.

During these discussions with the Sheriff, the situation concerning the Clerk was often mentioned. As you know, Sherry Hall has retained attorney Bill Cloran and others to advise the Clerk's office. I believe that she receives an annual budgeted amount of \$60,000 for these services. Needless to say, the fact that the Clerk can retain outside counsel, and the Sheriff cannot, presents some challenges.

I believe that it is in the best interest of the County to have all legal matters involving County operations to be handled by county counsel upon terms and conditions approved by the Board. Accordingly, I recommend that we revisit this issue, especially as it pertains to the Clerk's office.

The County should establish a firm and consistent county-wide policy concerning the hiring of all outside counsel. The retaining of outside counsel should be the exception, and not the rule. All outside counsel should be hired by the County Counsel and approved by the Board.

The basis for my opinion is found in state law and County Code. First, Oregon law describes who represents the County in legal proceedings. ORS 203.145 provides:

[T]he board of each county may appoint a person or persons licensed to practice law in the State of Oregon as counsel to advise the board and other county officers, to render services in connection with legal questions of a civil nature arising in the discharge of their functions, to prosecute violations of county law as defined by ORS 203.810, and to provide such additional services as the board determines. Counsel shall serve at the pleasure of the board, on a full- or part-time basis, and be compensated in the manner and amounts the board determines. The board shall reimburse counsel for necessary expenses incurred in performance of services rendered and may provide personnel, facilities and office space necessary for counsel to render such services.

(3) When a person or persons licensed to practice law in the State of Oregon have been appointed pursuant to subsection (2) of this section, they shall have the same civil authority and responsibilities as are otherwise provided for the district attorney when acting as advisor to the board and county officers

That structure is further supported by our County Code. Chapter 2.12 sets forth the role, duties, and authority of the County Counsel.

The Office of County Counsel represents the County, and is authorized to provide legal advice and representation to the Board and other County officers, to render services in connection with legal questions of a civil nature arising in the discharge of their functions, to prosecute violations of County law as defined by statute, and to provide such additional services as determined by the board.

The Code continues to describe the scope of authority of County Counsel.

The County Counsel shall be the chief legal officer of the County, and oversees all legal matters of a civil nature involving the County. Within broad objectives established by the Board of County Commissioners, the County Counsel will plan, organize, direct and manage all civil legal personnel and activities for the county, work closely with the County Administrator, and keep the Board informed of pertinent matters. Section 2.12.020

Additional duties and responsibilities assigned to the county counsel include:

B. Provides or oversees legal representation as determined by the Board in civil matters on behalf of the County;

C. Provides legal counsel to the Board of County Commissioners, County officers, the County Administrator, department directors, County employees and various boards and commissions, on matters pertaining to official county operations;

H. Hires outside legal counsel on behalf of the County, subject to applicable law and County policy, upon such terms and conditions as may be approved by the Board. Section 2.12.030.

Both state law and County Code unequivocally set forth the duties and province of the County Counsel. Moreover, both sources make it clear, it is the Board that hires and directs County Counsel. It is not the Clerk, or the Sheriff, or any other elected County official. Allowing any elected official to unilaterally retain their own counsel for any purpose is inefficient, wasteful, and establishes a bad precedent. Lastly, the potential for conflicts between the Board and the other independently represented elected officials is inevitable.

To be sure, there will continue to be situations where outside counsel is required. Such situations typically include when county counsel has a conflict in the representation of a particular client, or when an area of legal expertise is required, such as bankruptcy or intellectual property. However, for the vast majority of situations, the Office of County Counsel is more than capable of competently representing the County's interest, including those of its elected officials.

I recommend that the County return to the model contemplated by state statute and our own Code. Such a stance would save the County money, consolidate legal authority with the Board, and serve to dissuade other elected officials from seeking legal advice from those outside of County Counsel.