COR Policy Regarding Waiver of Conflicts

General Policy

As a general rule, COR discourages attorneys who are retained by this office as outside legal counsel for the City, from representing parties in claims or suits against the City, its departments, agencies, or employees. COR realizes, however, that there may be exceptions to the general rule, and when considering these exceptional circumstances and whether to waive conflict in such cases, COR reviews and scrutinizes each request on a case-by-case basis, taking into account, inter alia, the following:

1) the similarity of the subject matter involved;

2) involvement of the same City department(s), agency(ies), or employee(s);

3) the quality of legal services delivered in the past by the outside counsel; and

4) the necessity for the expertise and reputation of the specific outside counsel, and relatedly, the availability of other comparable outside counsel.

The closer the similarities of the subject matter and the greater the probability the same City departments, agencies or employees may be involved, the less likely the conflict will be waived by COR.

The primary concern with waiver of conflict is that information obtained through representation of the City would create an unfair advantage for the outside counsel in matters against the City. An example of such "inside information" is outside counsel's knowledge of defenses based on knowledge of certain matters known only by the City and which may need to be raised by the City in a claim brought against it. Moreover, through its representation of the City in a case involving a certain subject matter, outside counsel may become familiar with the personalities, habits, propensities, etc. of certain City employees who may be called to testify as a witness (possibly in an adverse capacity) in another type of case against the City. In short, the serious consequence in both situations is that the City would, in essence, be paying outside legal counsel to educate those counsel as to how to successfully bring legal action against the City.

Procedure

All requests for waiver should be in writing from the outside counsel requesting the waiver, and the response from COR will also be in writing. In any request for waiver, outside counsel shall set forth all pending cases or matters for which they currently represent the City, as well as all cases in which they represented the City in the past. Deputies affected by the waiver should advise Corporation Counsel as to the advisability of the waiver, in light of the aforementioned, and any other relevant considerations, and if not offered, Corporation Counsel will solicit the opinion of said Deputies.