



## Department of Law

### DEPARTMENT OF LAW ANNUAL REPORT

June 19, 2008

#### INTRODUCTION

This Report is provided to the City Council and the Mayor pursuant to Home Rule Charter Section 1201(e) and Section 2-98 of the Code of Ordinances. Part I describes the organizational structure of the Department of Law. Part II summarizes major accomplishments by the Law Department in fiscal year 2007-2008.

#### ORGANIZATIONAL STRUCTURE

City Solicitor Joseph M. Fernandez is the Chief Executive of the Law Department, supervising the legal and administrative work of the Department, making legal, policy and strategic decisions concerning work product, and serving as liaison and chief counsel to the City Council and the Administration. Day-to-day office management is provided by Deputy City Solicitor Adrienne G. Southgate, who also provides regular counsel to the City Council and certain city departments. Primary responsibility for litigation management rests with Senior Assistant City Solicitor Anthony F. Cottone, while corporate and regulatory matters fall within the ambit of Senior Assistant City Solicitor Frederick W. Stolle's portfolio.

The City's FY2008 budget authorizes and funds five senior assistant city solicitors.<sup>1</sup> In addition to Mr. Cottone and Mr. Stolle, the ranks include Senior Assistant City Solicitor Kevin F. McHugh, who specializes in federal court trial practice, particularly in representation of the Providence Police Department, and Senior Assistant City Solicitor William T. Smitherman, who focuses his practice on tax and financial litigation.

Nine<sup>2</sup> assistant city solicitors -- Olajumoke O. Akinrolabu, Michael A. Calise, Steven L. Catalano, Kenneth B. Chiavarini, Maxford O. Foster, Sarah A. Potter, Michael A. Tarro and Melissa C. Tucker -- function as prosecutors in the District,

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<sup>1</sup> As of this writing, one position has been recently vacated; the office is engaged in interviewing candidates for this vacancy.

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Municipal, Housing and Family courts; as counsel to the Providence School Department, the Human Resources Department, the Board of Licenses, the Human Relations Commission, the Zoning Board, and the External Review Authority; and as civil litigators in the Superior Court. All members of the Law Department are admitted to practice before the Rhode Island Supreme Court and the United States District Court for Rhode Island; seven are also admitted to the United States Court of Appeals for the First Circuit and three to the United States Supreme Court. Collectively, the present complement of attorneys represent over 200 years' admission to the bar.

The office has had the good fortune to maintain an excellent and stable support and paraprofessional staff, which includes office manager Sheila Sanchez, Carolyn Ranucci, Alison Chiaverini, Ramona Liberato, Sharon Mulcahey, Cheryl Keeler and Gregory Marcogliese.

### **Department Accomplishments**

The Law Department operates under a set of goals and objectives which were put in place in 2005. The goals include satisfactory resolution of claims and lawsuits against the City of Providence; accurate and timely response to the City Council and City departments requesting legal assistance and support; fulfillment of the Solicitor's Home Rule Charter obligation to ensure the ethical conduct of City officials and employees; and representation of the City in a dispassionate, professional and competent manner. The objectives include enhancement of the Law Department's reputation and the respect accorded to its members in the courts, conference rooms and board rooms of the City; and the training and mentoring of the next generation of municipal attorneys.

During the past year, the Department has met these goals:

- Appendix A details the claims and lawsuits settled or filed since 2003. The Department has compiled an admirable record, paying out a mere 0.35% of the total value of claims and 30.32% of the total claimed value of settled lawsuits.
- Although there is no way to quantify completely the myriad requests for legal assistance from the City Council and various departments -- the gamut of transactions includes responses to public records requests, guidance on open meetings issues, drafting of resolutions and ordinances, issuance of formal legal opinions, preparation of Executive Orders, contract and lease preparation or review, ethics opinions, bond financing document preparation or review, drafting of rules and regulations, research on and drafting of legislation, and other requests for advice or counsel -- the Department has drafted approximately fifty Resolutions, one hundred Ordinances, and ten Executive Orders in the past year.
- To fulfill the Solicitor's Home Rule Charter obligation to ensure ethical conduct of City officials and employees, the Department had participated

in the work of the Mayor's Ethics Task Force and shepherded the process of adopting the new City Code of Conduct, and has since designated an Assistant City Solicitor as Municipal Integrity Officer (MIO) to conduct ethics education seminars for all City departments and to provide advisory opinions to those seeking to determine whether a course of conduct meets the City or State requirements. The Department obtained six formal advisory opinions from the Rhode Island Ethics Commission and responded to numerous employee inquiries seeking guidance on various ethical issues.

- A set of targets has been established to measure the prompt and competent completion of various types of assignments.

The remainder of this report highlights some of the important achievements over the 2007-2008 period.

### Litigation

The Law Department is defending the City and various City officials in 600 cases pending in state Superior Court and in approximately twenty cases pending in the federal courts.<sup>3</sup> The great bulk of the cases being handled by the Department involve tax appeals or personal injury claims involving either slips and falls on city sidewalks or motor vehicle accidents involving City personnel. A number of pending cases also involve employment matters and appeals from the city's Zoning and Retirement Boards, as well as challenges to action taken by the Department of Inspection and Standards.

Of course, the Law Department also acts as the prosecutor for the City each week in the Municipal Court (environmental, traffic and miscellaneous code violations), Housing Court (housing code violations and related matters) and the state District and Family Court (juvenile and misdemeanor prosecutions) in addition to serving as counsel to the executive and legislative branch of the City and to various boards and commissions.

A list of those pending cases which the Law Department estimates represent a greater than \$250,000 exposure to the City are attached as Exhibit A.

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<sup>3</sup> There are presently 727 active cases pending in various courts:

- 3 in the United States Court of Appeals for the First Circuit
- 15 in the United States District Court for the District of Rhode Island
- 13 in the Rhode Island Supreme Court
- 600 in the Rhode Island Superior Court for Providence County
- 95 in the Rhode Island District Court, Sixth Division

Recent matters disposed of include:

77 Taber Ave., LLC v. City of Providence, Superior Court C.A. No. PC08-0505: Judge Savage's June 17, 2008 decision upheld the right of the City's Zoning Board of Review to enforce the Zoning Ordinance as applied to an illegal roof deck despite prior erroneous issuance of building permit.

Jean Tierney v. City of Providence, Superior Court C.A. No. 05-1659: the plaintiff in a personal injury action alleging a sidewalk defect was found 75% comparatively negligent on June 10, 2008 by a jury sitting before Judge Indeglia.

City of Providence v. Estate of Stephen A. Tarro, Superior Court C.A. No. PC 07-0673: owners of historic school found to have illegally commenced demolition without proper approvals and fined accordingly. The City is pressing an appeal as to other aspects of the decision in an attempt to preserve the historic building.

140 Reservoir Avenue v. Sepe Investments, LLC v. City of Providence, Supreme Court No. 2006-256: Upheld validity of City tax sale and foreclosure procedures.

City of Providence v. Jacqueline E. Lasalandra, Municipal Court Citation No. 07409666020: On April 2, 2008, Judge Abbate rendered a decision dismissing a procedural and constitutional challenge to the City's automated traffic monitoring system.

Veronique Ibobokiwe v. City of Providence, Superior Court C.A. No. PC 00-0764: Judge Gibney granted the City's pre-trial motion to dismiss on March 31, 2008 in this action making various procedural and constitutional claims with respect to the City's demolition and tax sale of certain real property.

Rita Owens v. City of Providence, Superior Court C.A. No. 03-6390: All claims against the City and various City officials, which included claims of wrongful demolition and wrongful tax sale, were dismissed by Judge McGuirl on March 13, 2008 following the City's pre-trial motion to dismiss.

Krysalis Foundation, et al. v. PRA, Superior Court C.A. No. 02-3262 and Persian Cultural Foundation v. Napolitano, C.A. No. 00-0613: All claims against the City and various City officials pending in these consolidated cases, which included claims of wrongful demolition, wrongful tax sale and various civil rights violations, were dismissed by Judge Gibney on February 19, 2008 after a week-long bench trial.

Deanna Aguilera v. City of Providence, Superior Court C.A. No. 07-0220: All claims against the City involving a traffic accident between a school bus and a rescue vehicle were dismissed in February, 2008 following plaintiff's settlement with co-defendant.

Manuel Furtado v. City of Providence, Superior Court C.A. No. 00-9554: The jury returned a verdict for the City on January 15, 2008 in this personal injury claim where the plaintiff claimed the accident had been caused by a missing stop sign.

Domenic Izzy v. Lidia Deleon, Superior Court C.A. No. 07-3368: All claims against the City in this case involving the Fire Department's allegedly negligent transfer of a pregnant woman to a hospital were dismissed in October, 2007 following plaintiff's settlement with a co-defendant.

Christopher Sabitoni v. Lidia Deleon, Superior Court C.A. No. 07-3368: All claims against the City in this case involving injuries and property damage sustained by plaintiff in a traffic accident allegedly caused by a missing stop sign were dismissed in October, 2007 following plaintiff's settlement with co-defendant.

Cannao v. San Filippo and City of Providence, Superior Court C.A. No. 05-3548: All claims against the City, which included the request for a declaration that the City be instructed to subdivide or partition a property whose ownership was in dispute, was dismissed by Judge Hurst in September of 2007 following the City's pre-trial motion to dismiss.

Thomas Walden v. City of Providence, Federal Court C.A. No. 04-304 S: This case brought by over 100 police and fire employees and their families and involving alleged constitutional violations and violations of the federal and state wiretap statutes was tried over three weeks before a jury and Magistrate Judge Almond. The jury awarded nominal damages as to the constitutional claims and approximately \$500,000 under the state wiretap statute. There are numerous issues which will be the subject of the City's appeal to the First Circuit.

City of Providence v. Corliss Restaurant, LLC d/b/a The 520 Club, Superior Court C.A. No. 08-2672: In April of 2008, the City successfully obtained injunctive relief in this first-ever enforcement proceeding in Superior Court under recently-enacted state law and regulations governing smoke-free public places and workplaces.

Since January 2003, the Solicitor has represented the City in connection with an investigation of the Providence Police Department by the Civil Rights Division of the United States Department of Justice. The investigation was based on allegations that the PPD was using excessive force and providing police services in a discriminatory fashion. In 2005, the Solicitor and Senior Assistant McHugh assisted the PPD in working with the Civil Rights Division to revise use of force policies and train the police command staff in the implementation of those policies. In March 2008, the Civil Rights Division closed its investigation.

### Transactional, Legislative and Regulatory Work

A major initiative launched by Chairman John Igliazzi and the City Council Committee on Finance has involved a revamping of the City's pension ordinances. Assistant City Solicitor Ken Chiavarini has taken a lead role in the following:

*Formalizing the disability application process.* An applicant must now provide documentation verifying identity, as well as a physician's statement that the applicant is physically or mentally incapacitated for the performance of duty, and he or she shall be retired. If applying for an accidental disability, the applicant must also provide the accident or incident report. Failure to follow all requirements will result in the application being returned and the denial of disability benefits. Applicants are no longer able to apply without submitting documentation of their disability. This will significantly reduce the number of individuals who apply in order to delay their return to work or who apply merely to be covered under the 18-month rule. Establishing timelines will move the application through the application process in a more efficient and regimented manner and prevent delays by the applicant and Board.

*Disability offset provision.* The change provides financial restrictions on what a disability pensioner may earn each year in addition to their disability benefit. Disabled pensioners must annually submit an authenticated copy or duplicate original of the member's complete United States income tax return, being a statement of income from gainful occupation for the preceding twelve (12) months. Individuals who fail to provide required statements of income will have their disability pension discontinued after a hearing.

Disability pensioners must certify annually that they are still disabled via certification from a physician. If an individual refuses to so certify, the disability retirement allowance will cease and the individual will be listed for re-appointment at the last salary grade before disability if he or she has not attained the age of service retirement. Should a pensioner's disability be alleviated (post-retirement age), the disability pension will be converted to a service pension.

*The elimination of Option 4 for Fire personnel who receive an accidental disability benefit.* Prior to the change, Fire personnel who select Option 4 received a single sum payment equal to the member's contribution with interest without a reduction to their monthly benefit. This was a significant drain on the retirement system.

In addition, substantial attention has been focused on the City Retirement Board, as a number of important cases have been heard.

The Department represented the City of Providence and its departments in numerous contractual and financial matters throughout 2007-2008. Such representation involved consultation; drafting of requests for proposals; review of pertinent charter,

statutory or code prescriptions; review of proposals, leases, and title reports; drafting of documents; and negotiating the matter through finalization. With regard to school financing for building renovations, the Department represented the City's interests with regard to the \$75,000,000 Rhode Island Health/Providence Building Authority's Revenue Bonds, Series A and \$16,470,000 Series B. In addition, the Department represented the City with respect to the \$29,910,000 Multi-Modal General Obligation Refunding. Our office works closely with the Departments of Administration, Finance and Purchasing to ensure that the City's interests are represented.

During the reporting year, increasing attention has been paid to "sunshine" in government, not only in the context of the Open Meetings Act (OMA) but also when the Access to Public Records Act (APRA) is involved. Two City departments were admonished in Attorney General findings over the past fifteen months for having unwittingly violated some aspect of the OMA, and an additional finding was made on an APRA matter. To respond, the Law Department mobilized, conducting seminars for the Mayor's Cabinet meeting and for several individual departments as well as circulating to all departments a primer on responding to records requests. Recent legislative action which both shortens the time for APRA responses and increases the fines for failure to comply means that this will continue to be a fertile area for departmental involvement.

The Department has had an on-going relationship with the Roger Williams University School of Law. During this fiscal year, we initiated a new phase, bringing in third year law students under Rhode Island Supreme Court Rule 9 (a provision authorizing students to practice before state and municipal courts, under supervision) to handle Providence Housing Court cases. The students have obtained excellent courtroom experience while bringing a level of vitality to the preparation of these cases.

The City's Board of Licenses has been very active this year. Most significantly, the Department was able to obtain a revocation of the license of S & M Liquors after that facility repeated sold alcoholic beverages to minors, in at least one instance leading to a death.

The legal needs of the Providence School Department have included a number of teacher termination hearings, one of which was recently affirmed by the Rhode Island Department of Education; three additional termination hearings are presently pending. The Department continues to handle arbitration of teacher grievances. On the transactional side, the Department has been involved with drafting contracts for the hiring of both a new superintendent and new assistant superintendent in charge of operations, as well as the revivification of the Providence School Department's associated 501(c)(3) corporation, the Rekindling the Dream Foundation.

Matters involving the Department of Planning and Development consistently require the engagement of at least one full-time attorney. During the past year, the Interim Comprehensive Plan was completed and enacted. A number of neighborhood

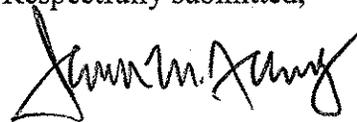
charettes, each of which is an input to the Comprehensive Plan, have been conducted. The newly created Technical Review Committee (composed of representatives from the departments of Inspections & Standards, Planning and Development, Parks, Public Works, Traffic Engineering and Law) which oversees major development projects, has been a factor in streamlining the City's permitting process. A special Demolition Task Force met weekly this spring to craft recommendations imposing a delay on developers seeking to raze buildings of historic importance. Monthly meetings of the City Plan Commission, Historic District Commission, DOWNCITY Design Review Commission, the Zoning Board, and the Providence Redevelopment Authority are part of the Department's responsibilities.

In June 2008, the Solicitor was asked by the Providence Emergency Management Agency to give a presentation on legal considerations during a declared emergency.

Professional Activities

The Solicitor encourages the attorneys to engage in professional community service, which helps to enhance the Department's reputation. Deputy Solicitor Southgate and Senior Assistant Smitherman continue to serve as chairs of the Rhode Island Bar Association's Government Lawyers Committee. In June 2007, the Solicitor was invited, for the second consecutive year, to make a presentation at a leading national conference on education funding. In March 2008, the Solicitor was asked by the Rhode Island Bar Association to teach a continuing legal education course on ethics and professionalism for government attorneys. In the spring of 2008, the Solicitor was invited to represent the City at events welcoming Chief Justice John Roberts and Justice Antonin Scalia of the United States Supreme Court to Rhode Island. The Solicitor continues in his role as a member of the Rhode Island Advisory Committee to the United States Commission on Civil Rights. In June 2008, the Solicitor attended a training session on federal laws protecting religious freedom by the Civil Rights Division of the United States Department of Justice.

Respectfully submitted,



Joseph M. Fernandez  
City Solicitor

IN CITY COUNCIL  
JUL 3 2008  
READ  
WHEREUPON IT IS ORDERED THAT  
THE SAME BE RECEIVED  
 CLERK