

ADRIENNE G. SOUTHGATE
City Solicitor



DAVID N. CICILLINE
Mayor

Department of Law

September 24, 2010

Hon. Peter Mancini
President, Providence City Council
Hon. Members of the City Council
City of Providence
City Hall
Providence, RI 02903

Re: 2009-2010 Annual Report

Dear President Mancini and Members of the City Council:

Attached is a copy of my Department's annual report. I'd like to correct one mistake; after the report was finalized and printed yesterday, we were advised that the City's website will not actually be "live" until October 4.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Adrienne G. Southgate".

Adrienne G. Southgate
City Solicitor

Encl.

IN CITY COUNCIL
OCT - 7 2010

READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.
A handwritten signature in dark ink, appearing to read "Clerk".
CLERK



Department of Law

DEPARTMENT OF LAW ANNUAL REPORT

September 24, 2010

INTRODUCTION

The Law Department is pleased to submit its Annual Report to the City Council and the Mayor pursuant to Home Rule Charter Section 1201(e).¹ Part I describes the organizational structure of the Department of Law. Part II summarizes major accomplishments by the Law Department in fiscal year 2009-2010.

ORGANIZATIONAL STRUCTURE

On September 21, 2009, Mayor David N. Cicilline appointed Deputy City Solicitor Adrienne G. Southgate to succeed Joseph M. Fernandez as City Solicitor. Confirmed by the Providence City Council in October 2009, Ms. Southgate 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 Frederick W. Stolle, who also provides regular counsel to the City Council Finance Committee and certain city departments. Primary responsibility for litigation management rests with Senior Assistant City Solicitor Anthony F. Cottone, created Deputy in the FY11 budget submission.

The City's FY10 budget authorizes and funds five senior assistant city solicitors. In addition to Mr. Cottone, formerly in that role, 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; Senior Assistant City Solicitor William T. Smitherman, who focuses his practice on tax and financial litigation; Senior Assistant City Solicitor Kenneth B. Chiavarini, who handles labor and employment matters; and Senior Assistant City Solicitor June E. Daniel, who handles school department matters.

¹ Previously, the Department submitted its list of active cases pursuant to Section 2-98 of the Code of Ordinances.

Ten assistant city solicitors -- Olajumoke O. Akinrolabu, Michael A. Calise, Brenda E. Carcieri,² Maxford O. Foster, David Iglizzi, Lincoln S. Lennon, Meghan McDonough, Julie Sacks, Michael A. Tarro and Melissa C. Tucker -- function as prosecutors in the District, 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 and District courts. In addition, Ms. Tucker is the Municipal Integrity Officer and the principal contact for Access to Public Records Act and Open Meetings inquiries.

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.

The support and paraprofessional staff include office manager Vicki Virgilio, legal secretaries Marcia Brown and Ellen Hoch, paralegal Ramona Liberato, claims administrator Sharon Mulcahey and clerk Gregory Marcogliese.

DEPARTMENT ACCOMPLISHMENTS

The Law Department operates under a set of goals and objectives. These 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.

Upon the Solicitor's confirmation by the Providence City Council, the Department embarked upon an ambitious project to reorganize and restructure the way in which departmental information is handled and stored. Ms. Hoch, who has IT skills, was hired to develop a new Claims database and to update or replace the Litigation database. The former Claims database was running on obsolete equipment and could no longer be serviced by the vendor, and the information contained therein could not be recaptured in the event of a system failure. In addition to transitioning all claims information to a new, state-of-the-art Access database running on updated equipment, new case management software has been developed so that case tracking is now made possible. The Department further collected and scanned every contract, lease, and other legal document into a searchable format for use by the City Controller, the Internal Auditor, and Departmental attorneys. The Law Department's new website went "live" on September 24 so as to provide the general public with insight into our operations.

² Ms. Carcieri, Mr. Iglizzi and Mr. Tarro work part-time.

As part of the Solicitor's continuing restructuring of the Law Department, a standard format case filing system was developed and the staff was trained on its implementation. Thereafter, secretarial staff and law student interns assisted litigators in organizing their files so that deadlines, discovery status, and settlement posture are readily available, and case reassignments do not require the receiving attorney to devote hours to understanding the new files.

As a further part of the restructuring effort, the Law Department library was culled and repurposed. Half of the space continues to shelve the case materials and treatises which remain a vital part of Law Department work; the remainder has become additional office space so that attorneys no longer have to share offices.

Finally, the Law Department reviewed the myriad of files which had been placed in temporary storage in the library, or in permanent off-site storage. Historical materials were transferred to the Archives, and documents which were no longer needed were destroyed consistent with the State's guidelines for record retention. The Department has been able to achieve significant efficiencies in off-site storage because of these efforts. Library filing cabinets and book shelves were physically relocated to provide resources to Department personnel.

As a result of all these efforts, performed completely in-house by Department personnel, the office is functioning more efficiently and in a more congenial atmosphere. The Department continues its monthly practice of offering in-house Continuing Legal Education programs for attorneys, and has broadened the invitation to include members of the Rhode Island Ethics Commission and the Rhode Island Government Lawyers Committee as well as other city employees whose licensure requires the accumulation of CLE credits. All of these initiatives have contributed to the Department's meeting its goals and objectives.

The remainder of this report highlights some of the important achievements over the 2009-2010 period.

1. Litigation

The Law Department's litigators have had an exceptionally busy year. Some of our notable cases include the successful defense against a broad-based challenge of a City ordinance which mandates that a foreclosing bank at least make a good faith attempt at mediation with the distressed homeowner before foreclosing. See Deutsch Bank National Trust Company v. City of Providence, C.A. No. PC 10-1240; Wells Fargo Bank, N.A. v. City of Providence, C.A. No. PC 10-0950; The Bank of New York Mellon v. City of Providence, C.A. No. PC 10-1646. We also successfully defended the City's ability to revoke and/or reduce an employee's pension under the City's Honorable Service Ordinance in the absence of a criminal conviction, and briefed the appeal of the relevant Superior Court decision to the Rhode Island Supreme Court. See Retirement Board v. Anthony Annarino, C.A. No. PB 02-5196; Retirement Board v. Kathleen Parsons, C.A.

No. PC 07-2175; Retirement Board v. Frank E. Corrente, C.A. No. PB 08-6508; John J. Ryan v. Retirement Board, SU-09-311-A; Retirement Board v. Urbano Prignano, Jr., SU-09-346.

The Education Partnership's bankruptcy prompted the Law Department's challenge to the court-appointed receiver's disbursement of the proceeds of an insurance policy, designed to insure some \$345,000 worth of scholarship funds earmarked for Providence school children, to general creditors. We secured a stay of the disbursement pending a decision by the Supreme Court as to the proper distribution of the proceeds. See Rebecca E. Book v. The Education Partnership, SU 2010-207. The Department also provided significant strategic assistance in developing a lawsuit to compel the State of Rhode Island to release approximately \$7,000,000 in third-quarter automobile tax payments to the City.

In addition, the Law Department was called upon to defend in federal court the recently-enacted Displaced Workers Ordinance from constitutional attack brought by local business interests. See Rhode Island Convention Center Authority, et al. v. City of Providence, et al., C.A. No. CV 09-527 ML.

The Department secured a reversal of a million dollar verdict against the city in the First Circuit Court of Appeals. The appeals court dismissed all the federal claims, finding that the plaintiffs' claims never should have gone to the jury. See Walden, et al. v. City of Providence, US Court of Appeals 08-1534. Another notable success for the Law Department involved a \$20,000,000 claim against the city for breach of contract related to the sewage treatment plant. The city had contracted with Inge Company to process sludge. Despite an earlier city solicitor's written opinion that the contract was enforceable, we argued at trial that the contract was invalid. Both the Superior Court and the Supreme Court agreed. Inge Company v. Stephen J. Napolitano, C.A. No. SU-07-0242-A.

In last year's annual report, the Department was awaiting a federal court jury verdict in a lengthy wrongful death action involving the School Department. The jury deadlocked, as the plaintiffs failed to prove their case. See Wanda Escobedo, et al. v. City of Providence, C.A. No. 06-5709. That set the stage for a settlement far below the statutory minimum and far less than the \$500,000 plaintiffs had demanded.

In the area of labor and employment matters, the past year has also been particularly active. In addition to providing daily counsel to the Human Resources Department, the Law Department:

- Negotiated and drafted labor agreements with the Firefighters' Union for the years 2007-2010 and 2010-2013. (It should be noted that the last negotiated contract with the Firefighters was 1999-2001.)
- Drafted first ever Rules & Regulations for the Retirement Board, which have been adopted.

- Successfully represented the City before the State of Rhode Island Board of Review involving highly publicized employee terminations - David Mambro, Kristen A. McCaffrey, Anthony Greenwood and James Dean.
- Successfully represented the City before the State of Rhode Island Commission for Human Rights in the Walter Snead matter where the Commission found no discrimination on behalf of the City.
- Convinced an arbitrator that Providence School Department's requirement that employees on a leave of absence pay the full COBRA (health insurance) premium does not violate the Collective Bargaining Agreements with the Providence School Board. This important decision applies to the following bargaining units at the Providence School Department - Crossing Guards, Teacher Assistants, Bus Monitors and B.E.S.T.

On the revenue side, the Law Department continues to handle a substantial number of tax appeals. During the past year, many tax appeals were settled on terms advantageous to the City, with no interest paid as part of the settlement, and with almost all payments taken as credit against future taxes rather than requiring the City to write settlement checks. A long-standing issue with taxation of the Washington Condominiums was resolved without the need for further litigation, as was the Westin Hotel valuation.

The Law Department employs a team of lawyers to handle matters involving the School Department. This past year, the Department played a significant role with two major initiatives to improve the quality of teaching in Providence public schools. The first involved criterion-based hiring of teachers, which was challenged by the Providence Teachers Union. The Law Department's efforts enabled the City to implement criterion based procedures so that the most qualified teachers can be hired, regardless of seniority, and the harmful practice of teacher "bumping" can be eliminated. We have continued to mediate the details of the policy with the union while defending the new policy against a federal court challenge by the union. See Providence Teachers Union v. Thomas Brady, et al., C.A. No. CV 09-0356 S. In another important School Department case, we successfully defended the School Board's right to terminate teachers who do not belong in the classroom against a broad-based due process challenge brought in Superior Court, and briefed the issue for decision by the Rhode Island Supreme Court this fall. See Fermin Ciprian, et al. v. Providence School Board, SU-09-368.

The second major initiative is the new process for evaluating teachers, which emphasizes actual classroom effectiveness. On the state level, the Law Department is working with Rhode Island Department of Education to address problems at four Providence public schools which led to their designation as "transformation schools" by the federal Department of Education.

The Schools team has also been working with the PPDS Finance Department to find ways to limit or eliminate unnecessary spending. New procedures for calculating employee matching funds has reduced the amount the City pays in FICA contributions;

and a cooperative purchasing agreement with another state allows our the City to purchase school supplies at a significant cost savings.

The Law Department continues to defend the School Board and the Superintendant in grievances brought by school unions. Several recent successes are evidence that new policies and procedures are based on a solid legal foundation. At the same time, arbitrations are relatively costly, so the Law Department is seeking to streamline the grievance process and resolve more grievances earlier.

The Prosecution team at the Law Department consists of four attorneys who serve before the Rhode Island District Court (Sixth Division), Rhode Island Family Court, Rhode Island Superior Court, City of Providence Municipal Court, City of Providence Housing Court, City of Providence Board of Licenses, and Rhode Island Traffic Tribunal. Over the past year, there have been considerable increases in the caseloads in these courts. To demonstrate the ways in which the Prosecution team efforts directly benefit the citizens of Providence, a more comprehensive review of the team's structure and function is provided here.

Sixth Division District Court. Prosecutors from the Law Department appear before the District Court three full days per week. This is the busiest misdemeanor calendar in the State. On average, they prosecute 100 or more matters each week, including misdemeanor trials, pre-trials, dispositions, motions, and enforcement of no contact orders. Prosecutors also make themselves available to the Court on non-court days in the event of extended trials or emergency matters that need to be addressed. Prosecutors are also responsible for defense appeals to the Rhode Island Superior Court for trial. The more aggressive use of so-called Rule 9 interns (senior law students who practice under the supervision of a qualified attorney) from various area law schools has increased the Department's ability to address the significant caseload. During the past year, the Prosecution team has also reached out and successfully improved contacts with court domestic violence advocates, the District Court Pre-trial Services Unit, and state probation to better coordinate its prosecution while improving daily contact with and service to victim witnesses. The team has been successful in demanding and obtaining compliance from the defense bar regarding the exchange of discovery and compliance with evidentiary rules. Past practices in that area were loose and legally unacceptable.

In the past year, our attorneys have made meaningful inroads into improved methods/practices of the prosecution/disposition of domestic violence offenses which make up approximately 60% of their total caseload. Additionally, the Prosecution team also participates in the recently convened Providence Police Domestic Violence Task Force Triage team, serving with the Rhode Island Attorney General, domestic violence advocates and Rhode Island state probation.

Finally, the Law Department Prosecution team has also successfully overhauled an antiquated and inadequate Providence Police court case filing apparatus which existed for decades and has replaced it with a system which improves record keeping, better manages week-to-week handling of these matters cases and establishes regular and

consistent accountability for actions taken by prosecutors both in and out of the courtroom.

Family Court. The Prosecution team handles Providence juvenile criminal matters in the Family Court three days per week, and is available to the Court for emergency probable cause hearings at any time. During the past year, this docket averaged 45 matters per week. Many of the cases were able to be resolved in bench conferences with the Court. Those conferences also involve representatives of Rhode Island Department of Children, Youth and Families and the Rhode Island Training School along with the Providence School Department, when applicable.

Law Department prosecutors also assisted the Providence School Department with hearings or trials on delinquency petitions, and assisted the Rhode Island Attorney General's prosecution at violation hearings and trials of delinquency petitions. They frequently consulted with and assisted the Youth Services Bureau of the Providence Police department on investigations, pending petitions, and preparation for hearings.

Housing Court. The Prosecution team works in conjunction with City's Department of Inspections and Standards to hold property owners accountable for failure to comply with the City's minimum housing ordinance and the State Building Code. The present economy has driven the rise in the numbers of vacant and boarded homes due to foreclosures and property abandonment. With increases in the number of foreclosures, banks become property owners and offer a unique challenge in terms of compliance with codes and addressing violations. Over the past year, the Housing Court has become a much more active court calendar, with thirty to forty matters presented each week during the three afternoon court sessions.

Providence Board of Licenses. Prosecutors from the team appear before the Providence Board of Licenses (BOL) three afternoons each week. Many of the matters presented to the board during the past year involved violations by businesses, particularly nightclubs, operating within the confines of the city. Unit prosecutors also handle appeals of the Board's decisions which are heard before the state Department of Business Regulation. Activity before the Board has increased over the past year with an average of twenty-five matters per week. In an effort to address the rising numbers of cases, the team worked with BOL staff to establish a pre-trial calendar with a view to avoiding full evidentiary hearings.

Additionally, prosecutors and Providence Police have worked to better coordinate their efforts in addressing the threat to public safety posed by various night clubs, particularly those frequented by college students (many of whom are underage). During the past year, the Board moved to require the use of more direct evidence during contested hearings (eyewitnesses and direct victim testimony in the more serious violent nightclub episodes). The Prosecution team readily met the newly raised standard of proof required by the Board resulting in numerous successful prosecutions, including the revocation of Club Elements' license, a thirty-day closure of Level II, a fourteen-day closure and significant fine for Mi Sueno, and, most recently, the permanent closure of

Club Balloons, an Allens Avenue strip club for 18-21 year olds, which was the site of a murder following a fracas inside the club. City prosecutors have pending actions against nine other clubs for a variety of significant violations.

The Law Department was also responsible for the State's first-ever complaint in Rhode Island Superior Court to enforce the "Smoking Bar" section of the "Public Health and Workplace Safety Act" (RIGL § 23-20.10 *et seq.*). See City of Providence v. Corliss Restaurant, Inc. d/b/a 520 Club, C.A. No. 08-2672.

Providence Municipal Court. The Prosecution team also appears before the Providence Municipal Court two days per week. One day is devoted to the criminal and traffic violations calendar, which averages fifteen trial matters each week. The offenses often involve criminal matters involving disorderly conduct and illegal activity involving local college students at local nightclubs and off campus housing. Occasionally, a defendant on active probation with a serious prior criminal history will appear for trial in this court after committing a serious misdemeanor offense. During the past year, the Prosecution team in coordination with the Rhode Island Attorney General and state probation has secured jail sentences, a result unheard of in that court merely two years ago, as well as serious fines and practical community service sentences.

A second day is devoted to environmental violations. With the advent of the recycling initiative, the caseload in this court increased; approximately 10-12 matters are set down for trial each week. Significant fines are imposed for repeat offenders, usually landlord/owners.

Several land use cases have also contributed to the Law Department's successful record in litigation. These include Gregory A. Raheb v. City of Providence, C.A. No. 07- 358, a negotiated resolution in a complicated zoning and building case that spanned the course of five years; and two victories on appeal in Dulgarian v. Providence Zoning Board of Review, C.A. Nos. 07-4789 & 084182, and One Athenaeum Row Condo. Ass'n v. Providence Zoning Board of Review, C.A. No. 07-1377 & 07-1378, in which the Superior Court upheld the judgment of the Zoning Board.

2. Transactional, administrative and legislative work

In keeping with previous years, the Law Department continues to handle the bulk of legislative drafting for the Providence City Council, in addition to drafting and reviewing bills for submission to the Rhode Island General Assembly.

Major transactions undertaken or completed during FY10 include:

- The Providence Hurricane Barrier was finally and formally transferred to the United States Army Corps of Engineers in May 2010, after several years of work by the Solicitor.
- \$13,250,000 Water Systems Revenue Bonds, Series A

- \$22,338,000 Public Buildings Authority (Qualified School Construction Projects), Series C
- Providence Public Library-Providence Community Library Leases and Subleases
- \$12,000,000 Public Buildings Authority Revenue Bonds (Streetscape), Series A
- \$1,000,000 Public Buildings Authority (Skating Center Project), Series B
- Animal Control Center Trust
- \$14,500,000 Master Lease Purchase (Lighting Refinancing)
- ISIS Biopolymer, Inc. PILOT (223 Richmond Street)
- Mercantile Block Tax Stabilization Agreement
- \$12,600,000 Providence Redevelopment Agency (Miscellaneous Parcels)
- Emergency Management Providence Metro Port area (PEMA, Raytheon, Johnson & Wales, ProvPort) siren, chemical detection and cameras security initiative

The Law Department also reviewed, or in some cases drafted, approximately one-hundred twenty zoning resolutions issued by the Providence Zoning Board.

Over the past year, the Department responded to over seventy public records requests. Only three of the responses to these requests were appealed, and the Attorney General sustained the Law Department's position, in whole or in part, on all three matters.

The Law Department maintains a relationship with the Rhode Island Ethics Commission, facilitating several formal ethics opinions for city employees or members of city boards and commissions and providing notice to those subject to the financial reporting requirements of the State Ethics Code when failure to file might lead to prosecution. The Municipal Integrity Officer and the Solicitor are always available to provide guidance to those seeking to conform their conduct to applicable regulatory requirements.

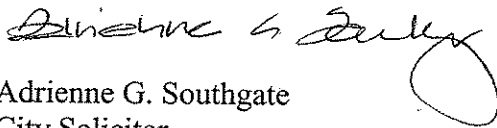
3. Professional activities and community relations

The Solicitor encourages Law Department attorneys to engage in professional community service, which helps to enhance the Department's reputation. During the past year, more than half the members of the Department have taught courses for which Continuing Legal Education credit was granted by the Rhode Island Supreme Court and the Rhode Island Bar Association (RIBA). The Solicitor served on four RIBA committees. Deputy Solicitor Anthony Cottone published an article in the Rhode Island Bar Journal. Assistant City Solicitor Olajumoke Akinrolabu was elected by her peers to the RIBA Representative Assembly. Assistant City Solicitor Julie Sacks participates in the RIBA *Pro Bono Publico* program. Assistant City Solicitor Meghan McDonough coached a mock trial court team from a local high school. In recognition of their contributions to combating domestic violence, Ms. McDonough and Assistant City

Solicitor Lincoln Lennon were formally recognized by the Women's Center of Rhode Island.

The Department has had an on-going relationship with the Roger Williams University School of Law. This spring, a third year law student worked under Rhode Island Supreme Court Rule 9 with Assistant City Solicitor Brenda Carcieri in Housing Court. In addition, Roger Williams has placed many law students with us as first-year summer interns and as volunteers to complete the school's 50-hour community service requirement. Finally, three recent Roger Williams graduates got their first professional experiences in the Department and have since moved on to positions with the Rhode Island Attorney General and the First Circuit Court of Appeals.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Adrienne G. Southgate", with a large, stylized loop at the end.

Adrienne G. Southgate
City Solicitor