

City Attorney's Office: Litigation and Claims Management Follow-up Report

April 2015

Office of the Auditor
Audit Services Division
City and County of Denver



Dennis J. Gallagher
Auditor

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City and County of Denver

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Dennis J. Gallagher

Auditor

April 20, 2015

Scott Martinez, City Attorney
City Attorney's Office
City and County of Denver
Re: Audit Follow-Up Report

Dear Mr. Martinez:

In keeping with professional auditing standards and the Audit Services Division's policy, as authorized by D.R.M.C. § 20-276, our Division has a responsibility to monitor and follow-up on audit recommendations to ensure audit findings are being addressed and to aid us in planning future audits.

This report is to inform you that we have completed our follow-up effort for the City Attorney's Office: Litigation and Claims Management audit issued June 2013. Our review determined that the City Attorney's Office (CAO) has implemented three of the recommendations made in the audit report. However, nine recommendations remain under review or in progress. Despite the CAO's efforts, auditors determined that the risk associated with the audit team's initial findings has not been fully mitigated. As a result, the Division may revisit these risk areas in future audits to ensure appropriate corrective action is taken.

For your reference, this report includes a Highlights page that provides background and summary information on the original audit and the completed follow-up effort. Following the Highlights page is a detailed implementation status update for each recommendation. Although we did not update the status of recommendations that the CAO disagreed with, these recommendations are included in the status update section as a reference.

This concludes audit follow-up work related to this audit. I would like to express our sincere appreciation to you and to CAO personnel who assisted us throughout the audit and follow-up process. If you have any questions, please feel free to contact me at 720-913-5029 or Marcus Garrett, Internal Audit Supervisor, at 720-913-5086.

Sincerely,

Kip Memmott, MA, CGAP, CRMA
Director of Audit Services

KRM/mg

*To promote open, accountable, efficient and effective government by performing impartial reviews and other audit services that provide objective and useful information to improve decision making by management and the people.
We will monitor and report on recommendations and progress towards their implementation.*

cc: Honorable Michael Hancock, Mayor
Honorable Members of City Council
Members of Audit Committee
Ms. Cary Kennedy, Deputy Mayor, Chief Financial Officer
Ms. Janice Sinden, Chief of Staff
Mr. David P. Edinger, Chief Performance Officer
Ms. Beth Machann, Controller
Ms. Janna Young, City Council Executive Staff Director
Mr. L. Michael Henry, Staff Director, Board of Ethics
Mr. Robert Nesper, City Attorney's Office Litigation Section Director

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REPORT HIGHLIGHTS



City Attorney's Office: Litigation and Claims Management Follow-up Report: April 2015

The City Attorney's Office (CAO) has fully implemented three recommendations made in the June 2013 audit report. As of April 2015, nine recommendations remained in progress.

Background

The City Attorney's Office (CAO) is responsible for performing a wide variety of legal and risk-related services for the City and County of Denver and its constituent agencies. This audit focuses on one portion of these services: litigation and claims management. The Civil Litigation Section oversees the claims process for both litigation and non-litigation claims. CAO also oversees the Liability Claims Fund, a self-insurance fund from which litigation and claims payments are made.

Purpose

The purpose of the audit was twofold:

- To understand how CAO manages litigation costs, including assessments of internal controls, the Liability Claims Fund, and the City's self-insurance practices; and
- To evaluate CAO's performance management, including assessing the impact of Practice Manager (a litigation management tool) and evaluating the performance management of outside legal services providers.

Highlights from Original Audit

Finding 1: Assigning CAO authority over the Liability Claims Fund does not promote Citywide risk management. CAO and Risk Management share responsibility for reducing the City's liability, but we found collaboration between the two agencies to be inconsistent and fragmented. CAO is the primary steward of liability claims and litigation data. Without the same level of access, Risk Management could not regularly assess or monitor the City's civil liability risks.

Finding 2: CAO's litigation management system was generally used as a document repository, rather than a comprehensive litigation management tool. Its limitations resulted in inefficiencies, such as the inability to provide timely response to external parties, limited search functionality, and the inability to synchronize with other software systems. CAO does not have the internal support to make improvements.

Finding 3: CAO could benefit from improved cost management practices. CAO uses outside counsel and other vendors to help defend their cases, the costs for which we found to be significant. However, CAO's cost management controls did not align with best practices for monitoring and evaluating vendors. Internally, litigation attorneys were not required to track their time and case budgets did not include time projected to be spent by CAO litigators.

Findings at Follow-up

CAO is monitoring the liability claims fund to identify trends and assess the City's self-insurance policy on an on-going basis. Additionally, CAO has identified a replacement litigation management system that should minimize associated risks observed during the audit. CAO will use a committee of subject matter experts and support from the City's Information Technology Services team to assist with successful implementation of the new system. Despite these improvements, we determined that the risk associated with our findings has not been fully mitigated.

Recommendations: Status of Implementation

Recommendation	Auditee Action	Status
Finding 1: Assigning Oversight of the Liability Claims Fund to the City Attorney’s Office Does Not Promote Citywide Risk Management		
<p>1.1 To enhance the transparency and accountability of the Liability Claims self-insurance fund and to ensure greater oversight of liability risks to the City, the Mayor should assign the oversight of the Liability Claims self-insurance fund to the Department of Finance and should direct the Manager of Finance to place the Liability Claims self-insurance fund under the administration and management of the Cash, Risk, and Capital Funding (CRCF) Division. This move would not require final approval of settlements but would allow CRCF to provide input from a citywide risk perspective on claims and litigation that impact the Liability Claims Fund. Further, CAO could share important risk information freely with CRCF, allowing CRCF to assess or monitor the City’s civil liability risks and work to reduce and prevent future liability.</p>	<p>No action taken.</p>	<p>Disagree</p>

Recommendations: Status of Implementation

Recommendation	Auditee Action	Status
<p>1.2 Until the Liability Claims Fund is moved to the Department of Finance, the City Attorney’s Office should work with Risk Management in the interim to conduct an assessment of liability trends over the past five years to-date, and use that information to identify activities to prevent problems, where applicable, to reduce the impact of problems when they occur, and to determine if self-insurance remains the best policy for protecting the City against liability risks.</p>	<p>The City Attorney’s Office has indicated that this recommendation will be implemented but work is not yet complete.</p>	<p>Agree/Not Implemented</p>
<p>1.3 The City Attorney’s Office should develop and implement a plan to assess liability trends at least quarterly until the Liability Claims Fund is moved to the Department of Finance.</p>	<p>The City Attorney’s Office has indicated that this recommendation will be implemented but work is not yet complete.</p>	<p>Agree/Not Implemented</p>
<p>Finding 2: City Attorney’s Office’s Litigation Management System Requires Additional Support and Evaluation</p>		
<p>2.1 The City Attorney’s Office should work with Technology Services and the Budget and Management Office to determine the IT staff support and funding needed to adequately address the technological needs of the City Attorney’s Office.</p>	<p>The City Attorney’s Office has indicated that the implementation of this recommendation is an on-going process.</p>	<p>Agree/Not Implemented</p>
<p>2.2 As part of their office-wide assessment of technological needs in recommendation 2.1, the City Attorney’s Office should determine whether it needs an independent system that will automatically calculate case-specific court dates.</p>	<p>The litigation management system software (JustWare) that will replace Practice Manager will have this capability.</p>	<p>Agree/Not Implemented</p>

Recommendations: Status of Implementation

	Recommendation	Auditee Action	Status
2.3	The City Attorney’s Office should upgrade Practice Manager to maximize its capabilities, using the City of Minneapolis as a model.	Practice Manager will be replaced by new litigation management system software (JustWare).	Agree/Not Implemented
2.4	In order to mirror the successful implementation of Practice Manager demonstrated by the City of Minneapolis, the City Attorney’s Office should work with Technology Services to establish one or more dedicated IT staff positions with Innovation Fund monies or revisit their IT shared services agreement.	Two Information Technology (IT) staff positions are now dedicated to the City Attorney's Office.	Implemented
2.5	The City Attorney’s Office should improve internal processes to assist in the successful implementation of any software litigation management system not limited to Practice Manager. This may include but should not be limited to specifying and restricting the Types and Categories fields and developing an internal process for establishing and enforcing a file naming convention for all documents stored in Practice Manager.	Committees comprising subject matter experts will work with Technology Services and the vendor of the new litigation management system software (JustWare) to accomplish this recommendation as part of the overall implementation of the new software.	Agree/Not Implemented
2.6	The City Attorney’s Office should conduct updated office-wide training on the litigation management system to improve utilization and understanding by office personnel.	Extensive training will accompany the implementation of the new litigation management system software (JustWare).	Agree/Not Implemented

Recommendations: Status of Implementation

	Recommendation	Auditee Action	Status
2.7	Once Practice Manager is optimally executed, the City Attorney’s Office should perform a follow-up assessment to determine whether Practice Manager meets the needs of the City Attorney’s Office or if a replacement litigation management system is still needed. If Practice Manager is still insufficient, the City Attorney’s Office should allow the current contract to expire and use the savings to replace Practice Manager or petition for 2014 Innovation Fund monies, among other viable budget sources.	Practice Manager will be replaced by new litigation management system software (JustWare).	Agree/Not Implemented

Finding 3: City Attorney’s Office Can Strengthen its Cost Management Controls

3.1	The City Attorney’s Office should implement a formal performance-based evaluation of outside vendors on at least an annual basis.	The City Attorney’s Office has indicated that this recommendation will be implemented but work is not yet complete.	Agree/Not Implemented
3.2	The City Attorney’s Office should implement a formal and consistent time tracking policy for litigation attorneys.	No action taken.	Disagree
3.3	The City Attorney’s Office should develop written procedures regarding time tracking to ensure greater consistency and more useful time tracking data.	No action taken.	Disagree
3.4	The City Attorney’s Office should require litigation attorneys to develop case budgets to account for all costs—internal and external.	Case budgets containing estimated internal and external costs are prepared for all lawsuits handled by the Litigation Section.	Implemented

Recommendations: Status of Implementation

Recommendation	Auditee Action	Status
3.5	The City Attorney's Office should provide written guidance for attorneys to develop comprehensive case budgets mentioned in recommendation 3.4.	Implemented

Conclusion

While the Department has implemented some recommendations made in the City Attorney's Office: Litigation and Claims Management audit report, others have yet to be acted upon or fully implemented. Despite the City Attorney's Office's (CAO's) efforts, auditors determined that the risk associated with the audit team's initial findings has not been fully mitigated. For example, a complete assessment of the liability claims fund is on-going, and the replacement case management system identified by the CAO has not yet been obtained. As a result, the Audit Services Division may revisit these risk areas in future audits to ensure appropriate corrective action is taken.

On behalf of the citizens of the City and County of Denver, we thank staff and leadership from the CAO for their cooperation during our follow-up effort and their dedicated public service.