



ANTONIO R. VILLARAIGOSA  
MAYOR

## EXECUTIVE DIRECTIVE NO. 9

Issue Date: January 10, 2007

**Subject:     Litigation Risk Management**

The City of Los Angeles has shown great progress in recent years both in reducing the number of claims filed against the City and in reducing total payouts of taxpayer funds to compensate claimants. Still, while lawsuits are an inevitable part of running a large City, there is room for further progress in preserving City resources by reducing and preventing claims against City operations and employees.

It is the City Attorney's charter-mandated responsibility to provide legal advice and to represent the City in defending litigation. In addition to a direct role in approving settlements and in making certain other litigation decisions, as Chief Executive Officer of the City, the Mayor has the responsibility to ensure that City personnel cooperate with the City Attorney's office (or conflict counsel in conflict cases) to secure an efficient and effective resolution of all claims filed against the City, and to ensure that active steps are taken based on experience with prior claims and lawsuits to reduce and prevent the filing of future claims. These two critical responsibilities require involvement at the highest levels of City management. Every Department Head has a responsibility to provide leadership in litigation risk management to continue to reduce City payouts and to reduce the number of claims filed. This responsibility includes assigning, training, and supervising high-level managers to engage directly on these tasks. Department Heads will be held accountable for the performance of these tasks and for progress in reducing the City's litigation risk and expense.

A successful litigation risk management system includes mechanisms to ensure regular completion of five key practices: 1) early review of filed claims and litigation to determine suitability for settlement; 2) ongoing, thorough review of the facts underlying filed claims and litigation to determine if systemic change in policy or practice is warranted to prevent similar future claims; 3) planning and implementation of identified changes in policy and/or practice; 4) thorough and timely review of the facts discovered in litigation to determine and implement any appropriate discipline and/or retraining for specific employees; and 5) careful and informed consideration of all decisions to appeal

or not to appeal adverse court determinations, with consideration of future City activity and the possibility of binding legal precedent.

The City of Los Angeles already has in place several mechanisms to accomplish the objectives underlying these practices. Indeed, many of the practices delineated below are already followed in several departments working closely with the City Attorney's Office. This Executive Directive seeks to ensure that the City regularly completes these five key practices, with the input of all appropriate knowledgeable managers. More specifically, this Executive Directive implements steps to ensure high-level involvement of all City departments in the practices necessary to minimize costs expended on litigation now and in the future.

In accordance with these objectives, I direct that each City department undertake the following actions, and ask that each proprietary department adopt similar practices:

### **Designate Senior Level Litigation Risk Manager**

Each Department Head shall designate a senior-level staff member to serve as Litigation Risk Manager, whose duties shall include:

1. Implementing the practices described in this Executive Directive;
2. Tracking all claims and litigation related to department employees and/or programs, including regularly seeking and receiving updates from counsel and reviewing critical discovery, such as depositions of department employees;
3. Serving as liaison to defense counsel, whether City Attorney or conflict counsel, in claims or litigation involving department employees and/or programs;
4. Serving as liaison to the Mayor's Office and the CAO with respect to all matters related to litigation risk management;
5. Representing the department before the Claims Board whenever department-related litigation is before the board;
6. Ensuring that appropriate department personnel are available and attend court hearings, mediations, depositions, and other legal proceedings when requested by the City Attorney's Office or Mayor's Office;
7. Ensuring the conduct and quality of all litigation-related reviews of policies, practices, and /or employee conduct to yield appropriate action, as described in this Executive Directive;

8. Reporting timely on all matters required in this Executive Directive; and
9. Developing and implementing, in consultation with Mayor's Office, CAO, and Personnel, other department-specific loss control and risk management practices.

Each Department Head shall submit the name and contact information of the designated Litigation Risk Manager to the Mayor's Office (Office of Counsel to the Mayor), with a copy to the City Attorney and to the CAO by no later than January 31, 2007. Each Department Head shall designate a new Litigation Risk Manager within 30 days of the current manager leaving the department.

### **Develop Department Protocols for Review of Litigation and Claims**

Each department, through its Litigation Risk Manager, shall develop a protocol with the City Attorney's Office for timely notice and ongoing evaluation of all claims or litigation served on the City that relate to department employees and/or programs. The protocol shall include mechanisms to ensure the following:

1. That the department receives timely notice and a copy of any claim or litigation-commencing complaint or petition, generally within ten days of the City's receipt or acceptance of service;
2. That the department cooperates with assigned defense counsel in the conduct of an early review of the allegations in the claim or litigation and investigation of the facts underlying the allegations;
3. That the department discusses and determines with assigned defense counsel whether early mediation or other settlement discussions would be appropriate in the case following initial review of the allegations and investigation of the facts, generally within 90 days of the City's receipt or acceptance of service of a pleading commencing litigation;
4. That the department discusses and determines with assigned defense counsel whether a statutory offer of settlement should be recommended to the Charter-designated decision-making body, at least six months before any scheduled trial date;
5. That the department engages in ongoing discussions with assigned defense counsel about the advisability of mediation or other settlement negotiations;
6. That the department has an opportunity to review all deposition transcripts of department employees or former employees, and all significant opposition-produced discovery documents, to determine if any follow-up action is warranted;

7. That the department discusses with assigned defense counsel whether an appeal should be filed, within two weeks of an adverse decision or judgment, and at least two weeks before any deadline to file or notice an appeal of any adverse decision or judgment;
8. That the department presents and discusses with assigned defense counsel any proposed change in policy or practice and any proposed employee discipline or retraining related to the facts underlying the claims in litigation before implementation to ensure no adverse effect on defense of the litigation.

This Executive Directive also requests that the City Attorney's Office work with each department to facilitate the development of protocols that meet the above criteria. In addition, each department shall work with the CAO and Mayor's Office (Office of Counsel to the Mayor) to secure compliance with the established protocol by conflict counsel in conflict cases.

Each department shall also develop an internal protocol with respect to claims or litigation served on the City that relate to department employees and/or programs. The protocol shall include timelines and mechanisms to ensure the following:

1. That an early and thorough investigation of the facts underlying any claim or litigation is completed, in cooperation with assigned defense counsel, within 90 days of the department's notice of the claim or litigation;
2. That the department evaluates carefully and thoroughly whether the allegations in the claim or litigation and the facts revealed through investigation suggest the advisability of a change in policy or practice, or the need for new or renewed training, and that such evaluation occurs following the early investigation (within 105 days of the department's notice of the claim or litigation), periodically as appropriate throughout the litigation as additional facts are discovered, and within 30 days following the conclusion of the litigation through settlement or judgment;
3. That the department timely develops and implements any warranted changes in policy, practice, and/or training after due consideration of litigation defense and budgetary impacts;
4. That plans for warranted changes in policy, practice, and/or training are evaluated for budgetary impact and included in the department's budgetary planning;
5. That the department evaluates carefully and thoroughly whether the allegations in the claim or litigation and the facts revealed through investigation suggest the advisability of discipline, reassignment, or retraining

- of individual employees whose actions contributed to potential liability, and that such evaluation occurs following the early investigation (within 105 days of the department's notice of the claim or litigation), periodically as appropriate throughout the litigation as additional facts are discovered, and within 30 days following the conclusion of the litigation through settlement or judgment;
6. That the department timely pursues any warranted discipline, reassignment, or retraining of individual employees whose actions contributed to potential liability after due consideration of litigation defense considerations and applicable Civil Service and Personnel rules; and
  7. That the department evaluates carefully and thoroughly whether the allegations in the claim or litigation and the facts revealed through investigation suggest the advisability of the City seeking a change in federal, state, or municipal law or regulation, and that such evaluation occurs following the early investigation (within 105 days of the department's notice of the claim or litigation), periodically as appropriate throughout the litigation as additional facts are discovered, and within 30 days following the conclusion of the litigation through settlement or judgment.

Each department shall submit its written protocol with the City Attorney's Office and its written internal protocol to the Mayor's Office (Office of the Counsel to the Mayor), with copies to the City Attorney and CAO by no later than June 15, 2007. Any future modifications to either protocol should be submitted to the same offices.

#### **Report Quarterly on Litigation Risk Management**

Each department shall submit a confidential quarterly written report to the Mayor's Office (Office of Counsel to the Mayor), with copies to the City Attorney and CAO, indicating each filed claim or litigation that relates to department employees and/or programs, and including the following:

1. The date the claim or litigation was filed, the date it was served, the date the department was notified of the claim or litigation, and any scheduled trial date;
2. The specific claims alleged in the claim or litigation;
3. Whether the early investigation and consideration of early settlement process was completed, including whether any early settlement process was pursued;
4. Whether evaluations of the claim or litigation for warranted changes in policy, practice or training, or individual employee discipline or training have been completed, including when completed, whether any such steps were pursued and the status of any such steps;

5. Whether evaluations of the claim or litigation for the advisability of seeking a change in federal, state, or municipal law or regulation, including any recommendation from those evaluations;
6. Whether the department has evaluated deposition transcripts or significant opposition-produced discovery;
7. Whether evaluations of possible statutory offer of settlement have occurred, when they occurred and whether an offer was made; and
8. Any judgment or decision adversely affecting the City's position, and what recommendation was reached after evaluating possible appeal.

These quarterly reports should be prepared with due regard to ensuring no harm to the defense position of the City in any open claim or litigation. Each department should expect to meet with its appropriate liaison in the Mayor's Office to discuss each quarterly report.

The first such quarterly report shall be due no later than July 15, 2007. Reports shall be due on July 15, October 15, January 15, and April 15 of 2007-2008 and every succeeding year.

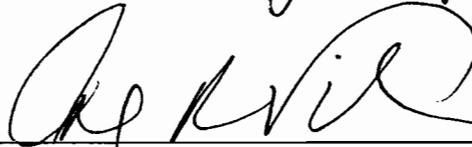
Departments with significant numbers of routine Workers Compensation, traffic-related negligence, or other ministerial types of claims, may request the Mayor's Office to exempt such cases from these protocols and to substitute a less-frequent and less detailed review of trends and patterns in such cases.

### **Summary of Required Actions**

1. Each Department Head shall designate a senior-level staff member as Litigation Risk Manager to perform the duties noted above. Designation is to be made in writing to the Mayor's Office (Office of Counsel to the Mayor), with copies to City Attorney and CAO, by no later than January 31, 2007. A new Litigation Risk Manager is to be designated, with appropriate notices, within 30 days of vacancy.
2. Each department shall develop a protocol with City Attorney's Office for notice and evaluation of litigation and claims, including elements noted above. Written protocol is to be submitted to Mayor's Office (Office of Counsel to the Mayor), with copies to City Attorney and CAO, by no later than June 15, 2007.
3. Each department shall develop an internal protocol for ongoing assessment and implementation of appropriate follow-up to claims and litigation, including elements noted above. Written protocol is to be submitted to Mayor's Office (Office of Counsel to the Mayor), with copies to City Attorney and CAO, by no later than June 15, 2007.

4. Each department shall submit a confidential quarterly report regarding claims / litigation and appropriate follow-up, including information noted above, to the Mayor's Office (Office of Counsel to the Mayor), with copies to City Attorney and CAO. First report is to be submitted by July 15, with subsequent reports due each year on October 15, January 15, April 15, and July 15.

Executed this 10<sup>th</sup> day of January, 2007



ANTONIO R. VILLARAIGOSA  
Mayor

Supercedes Executive Directive 2001-36 (Riordan)