



ERIE COUNTY

REQUEST FOR PROPOSALS (“RFP”)
TO PROVIDE SPECIAL INVESTIGATIVE
COUNSEL SERVICES
CONCERNING THE ALLEGED ACTIONS
OF THE FORMER COUNTY
COMMISSIONER OF SOCIAL SERVICES

RFP # 1812 VF

March 29, 2018

**Peter J. Savage, III, Esq., Chair
Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202**

COUNTY OF ERIE, NEW YORK
REQUEST FOR PROPOSALS (“RFP”)

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**TO PROVIDE SPECIAL
INVESTIGATIVE COUNSEL SERVICES
CONCERNING THE ALLEGED ACTIONS OF THE
FORMER COUNTY COMMISSIONER OF SOCIAL
SERVICES**

I. INTRODUCTION

The County of Erie, New York (the “County”) is currently seeking Proposal Statements from qualified law Firms interested in serving as Special Investigative Counsel to the Erie County Legislature (“Legislature”). The selected Firm shall provide legal and investigatory services concerning the alleged actions of the County’s former Commissioner of Social Services concerning his alleged behavior with a subordinate employee and/or employees.

For reference purposes concerning the scope of this inquiry and the services to be provided, please see the Legislature’s resolution, Intro. 6-10, approved by the Legislature on March 15, 2018. That resolution directed the issuance of this RFP and the establishment of a temporary oversight committee to offer a recommendation of the Special Investigative Counsel, pursuant to a properly issued RFP, and to direct the special counsel’s work. The resolution can be seen at http://www2.erie.gov/legislature/sites/www2.erie.gov.legislature/files/uploads/Session_Folders/18Intro.6-10.PDF.

The Special Investigative Counsel shall investigate:

- Claims or complaints, whether formal or informal, related to former Social Services Commissioner Albert Dirschberger, whether made during his tenure as Social Services Commissioner or complaints that were known or should have known prior to his hiring;
- The procedure followed for each complaint or claim made during the Commissioner’s tenure as head of Social Services, and any corrective actions taken;
- Written procedures followed by other counties as to similar complaints made against supervisors, co-workers, or employees in general;
- Informal complaints shall be investigated so as to help determine whether or not action should have been taken relative to the complaint whether it was submitted in proper form or not;
- Whether any complaints or claims were sent to, were required to be sent to, or should have been sent to anyone in the Equal Employment Office, the Personnel Office, the County Attorney’s Office, or the Executive Office;
- Was the County negligent in the hiring and supervision of Albert Dirschberger?
- Was anyone in County government aware of sexual harassment and/or abuse by Albert Dirschberger while he was employed by Erie County, and allowed said conduct to continue unabated?
- Was the County negligent in their duty to protect employees from Albert Dirschberger, or instances of sexual harassment or assault?

- Was the County negligent in failing to protect employees from the dangers posed by Albert Dirschberger?
- Who had, or should have had actual or constructive notice of the prior actions of Albert Dirschberger, specific to sexually harassing and or abusing employees in his charge?

The Firm chosen will serve as a Special Investigative Counsel examining the former Commissioner’s alleged actions and the County’s response during his tenure, up to his separation from service.

Proposers interested in providing legal representation services are invited to respond to this request. In your response to this RFP you should provide us with pricing for legal representation of the County. The specifications set forth below detail the minimum requirements for services sought. Any modifications, additions or enhancements to the program outlined should be clearly indicated and accompanied by a statement of explanation.

It is the County Legislature's intent to select the Proposer that provides the best solution for the County's needs.

The County Legislature or Legislature’s temporary oversight committee reserves the right to amend this RFP. The County Legislature or Legislature’s temporary oversight committee reserves the right to reject any or all of the proposals, or any part thereof, submitted in response to this RFP, and reserves the right to waive formalities, if such action is deemed to be in the best interest of the County. The County Legislature or Legislature’s temporary oversight committee reserves the right to request additional information from any proposer. The County Legislature reserves the right to award negotiated contracts to one or more proposers.

This RFP is not intended and shall not be construed to commit the County to pay any costs incurred in connection with any proposal or to procure or contract with any Firm.

The County will only contract with Firms that do not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, citizenship status or any other status protected by New York State and Federal laws.

II. PROPOSAL PROCEDURES

A. ANTICIPATED SCHEDULE OF PROPOSAL

The following schedule is for informational purpose only. The Legislature reserves the right to amend this schedule at any time.

Issue RFP:	March 29, 2018
Proposals Due:	April 20, 2018
Recommendation from Temporary Committee Made:	May 4, 2018
Approval of Oversight Committee Recommendation by Legislature:	May 10, 2018
Engagement Letter Signed:	Following all necessary County approvals

B. GENERAL REQUIREMENTS

1. Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond what is sufficient to provide a complete, accurate and reliable presentation. Each response should be accompanied by a letter of transmittal not exceeding three (3) pages which summarizes key points of the response and which is signed by an officer or representative of the Firm authorized to commit the Firm's resources.
2. One (1) original and four (4) copies shall be submitted. Proposals **MUST** be signed. Unsigned proposals will be rejected.
3. Submission of the proposals shall be directed to:

Erie County Legislature
Attn: Robert Graber, Clerk of the Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

All proposals must be delivered to the above office on or before April 20, 2018 at 3:00 p.m. Proposals received after the above date and time will not be considered. The County is under no obligation to return proposals.

4. Requests for clarification of this RFP must be written and submitted via electronic mail to Robert Graber, Clerk of the Erie County Legislature at Robert.Graber@erie.gov no later than 3:00 p.m. on April 6, 2018. Formal written responses will be distributed by the County on or before April 11, 2018. **NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION.**
5. Proposers may be required to give an oral presentation to the temporary oversight committee to clarify or elaborate on the written proposal. Those proposers will be notified to arrange specific times.
6. No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.
7. Certified Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) proposers should include the Erie County certification letter with the proposal.
8. If proposer is a Veteran Owned Business, proposer should include letter indicating company is 51% or more Veteran-owned.
9. **All proposals must include a cost proposal.** Such fees are inclusive of proposer's travel, research, postage, telephone, and file delivery charges.

III. SCOPE OF PROFESSIONAL SERVICES REQUIRED

A. Responses to this RFP should address the following:

1. **Experience.** Please describe the Firm's history and experience with: providing legal services related to investigations of individuals and managers concerning alleged workplace sexual abuse, sexual harassment, policies concerning fraternization, complaints and protocols concerning workplace behavior issues, and labor law matters. Special attention should be highlighted to the Firm's experience in New York State with such matters and investigations.
2. **Personnel.** Please identify the individuals who would be assigned to provide legal services, including information about their relevant experience and abilities.
3. **References.** Identify three (3) clients that the County may contact as references. For each reference, include the name, title, address and phone number of the appropriate business contact.
4. Please identify any actual or potential conflicts of interest which may present themselves in the event that your Firm is selected to provide legal representation services to the County. Further, please advise how such conflicts would be resolved.

B. SPECIFICATIONS - The successful Firm to whom the contract is awarded shall enter into an engagement letter with the County to perform the services described herein. These specifications shall be incorporated in and become a part of the final engagement letter. These specifications detail the minimum requirements for services sought. Any modifications, additions or enhancements to the program outlined should be clearly indicated and accompanied by a statement of explanation.

1. The Firm shall investigate the issues concerning the alleged behavior of the former County Commissioner of Social Services and the responses of the County through and to his separation from service.
2. The Firm must take note of the scope of the work to be performed as detailed in Intro. 6-10 (2018). The Firm chosen will serve as a special investigative counsel and be responsible to the Erie County Legislature and the Erie County Legislature's temporary oversight committee.
3. The Firm shall, as directed, draft documentation necessary to implement the negotiated terms of the engagement.
4. From time to time, the Firm shall respond to requests for information and updates, and take direction from the Chair of the Erie County Legislature in his role as head of the temporary investigative committee and the Firm shall be available for consultation upon reasonable notice.
5. The Firm shall defend, hold harmless, and indemnify the County against any and all liability, claims or damages resulting from any acts, negligence or malpractice of any person or persons who are officials, professionals, employees or persons affiliated with the Firm arising out of or from any services relating to the engagement letter.

6. The Firm shall adhere to the County's Outside Counsel Guidelines attached hereto as Schedule "C".

IV. STATEMENT OF RIGHTS

UNDERSTANDINGS

Please take notice, by submission of a proposal in response to this request for proposals, the proposer agrees to and understands:

- that any proposal, attachments, additional information, etc. submitted pursuant to this Request for Proposals constitute merely a suggestion to negotiate with the County of Erie and is not a bid under Section 103 of the New York State General Municipal Law;
- submission of a proposal, attachments, and additional information shall not entitle the proposer to enter into an agreement with the County of Erie for the required services;
- by submitting a proposal, the proposer agrees and understands that the County of Erie is not obligated to respond to the proposal, nor is it legally bound in any manner whatsoever by submission of same;
- that any and all counter-proposals, negotiations or any communications received by a proposing entity, its officers, employees or agents from the County, its elected officials, officers, employees or agents, shall not be binding against the County of Erie, its elected officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and if necessary, approved by the Erie County Legislature and the Office of the Erie County Attorney.

In addition to the foregoing, by submitting a proposal, the proposer also understands and agrees that the Erie County Legislature reserves the right, and may at its sole discretion exercise, the following rights and options with respect to this Request for Proposals:

- To reject any or all proposals;
- To issue amendments to this RFP;
- To issue additional solicitations for proposals;
- To waive any irregularities in proposals received after notification to proposers affected;
- To select any proposal as the basis for negotiations of a contract, and to negotiate with one or more of the proposers for amendments or other modifications to their proposals;
- To conduct investigations with respect to the qualifications of each proposer;
- To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of proposals, and the negotiations and award of any contract;
- To enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals with one or more of the proposers;

- To select the proposal that best satisfies the interests of the County and not necessarily on the basis of price or any other single factor;
- To interview the proposer(s);
- To request or obtain additional information the Legislature or temporary oversight committee deems necessary to determine the ability of the proposer;
- To modify dates;
- All proposals prepared in response to this RFP are at the sole expense of the proposer, and with the express understanding that there will be no claim, whatsoever, for reimbursement from the County for the expenses of preparation. The County assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any proposal;
- While this is a RFP and not a bid, the County reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process; and
- The County is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein and be time stamped prior to the deadline.

EVALUATION

The following criteria, not necessarily listed in order of importance, will be used by the Erie County Legislature's temporary oversight committee to review the proposals. The Legislature or the temporary oversight committee reserves the right to weigh its evaluation criteria in any manner it deems appropriate:

- Proposer's demonstrated capability to provide the services.
- Evaluation of the professional qualifications, personal background and resume(s) of individuals involved in providing services.
- Proposer's experience to perform the proposed services.
- Proposer's financial ability to provide the services.
- Evaluation of the proposer's fee submission. It should be noted that while price is not the only consideration, it is an important one. Proposer's prices are to be no higher than those offered to any other governmental or commercial consumer. If a proposer has a New York State or a Federal GSA contract for any of the services covered in this RFP, proposer shall so indicate that he has said contract and supply a copy of the contract(s).
- A determination that the proposer has submitted a complete and responsive proposal as required by this RFP.

- An evaluation of the proposer’s projected approach and plans to meet the requirements of this RFP.
- The proposer’s presentation at and the overall results of any interview conducted with the proposer.
- Proposers **MUST** sign the Proposal Certification attached hereto as Schedule “A”. Unsigned proposals will be rejected.
- Proposers may be required to give an oral presentation to the Erie County Legislature or to the Legislature’s temporary oversight committee to clarify or elaborate on the written proposal.
- No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

CONTRACT

After selection of the successful proposer, a formal written engagement letter will be prepared by the County of Erie and will not be binding until signed by both parties and approved by the Erie County Legislature and, as to form, by the Office of the Erie County Attorney. **NO RIGHTS SHALL ACCRUE TO ANY PROPOSER BY THE FACT THAT A PROPOSAL HAS BEEN SELECTED BY THE TEMPORARY OVERSIGHT COMMITTEE FOR SUBMISSION TO THE ERIE COUNTY LEGISLATURE FOR APPROVAL. THE APPROVAL OF SAID LEGISLATURE IS NECESSARY BEFORE A VALID AND BINDING CONTRACT MAY BE EXECUTED BY THE COUNTY.**

The term of the engagement letter shall commence upon execution and terminate upon the conclusion of the Firm’s representation of the County on the referenced contractual matters. The Erie County Legislature, in its sole discretion, may terminate the engagement in whole or in part when the County deems it to be in its best interest. In such event, the Firm shall be compensated and the County shall be liable only for payment for services already rendered under the engagement prior to the effective date of termination at the rates specified.

INDEMNIFICATION AND INSURANCE

The proposer accepts and agrees that language in substantially the following form will be included in the engagement letter between the proposer and the County:

“In addition to, and not in limitation of the insurance requirements contained herein the Firm agrees:

- (a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Firm shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or

loss arising directly or indirectly out of the acts or omissions hereunder by the Firm or third parties under the direction or control of the Firm; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

Upon execution of any engagement letter between the proposer and the County, the proposer will be required to provide proof of the insurance coverage described in Schedule "B".

Insurance coverage in amount and form shall not be deemed acceptable until approved by the County Attorney.

NON-COLLUSION

The proposer, by signing the proposal, does hereby warrant and represent that any ensuing agreement has not been solicited, secured or prepared directly or indirectly, in a manner contrary to the laws of the State of New York and the County of Erie, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or the giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any County employee, officer or official.

CONFLICT OF INTEREST

All proposers must disclose with their proposals the name of any officer, director or agent who is also an employee of the County of Erie. Further, all proposers must disclose the name of any County employee who owns, directly or indirectly, an interest of ten percent or more in the Firm or any of its subsidiaries or affiliates.

There shall be no unresolved conflicts in existence during the term of any engagement letter with the County. The existence of an unresolved conflict shall be grounds for termination of an engagement letter.

COMPLIANCE WITH LAWS

By submitting a proposal, the proposer represents and warrants that it is familiar with all federal, state and local laws and regulations and will conform to said laws and regulations. The preparation of proposals, selection of proposers and the award of contracts are subject to provisions of all Federal, State and County laws, rules and regulations.

CONTENTS OF PROPOSAL

The New York State Freedom of Information Law as set forth in Public Officers Law, Article 6, Sections 84 et seq., mandates public access to government records. However, proposals submitted in response to this RFP may contain technical, financial background or other data, public disclosure of which could cause substantial injury to the proposer's competitive position or constitute a trade secret. Proposers who have a good faith belief that information submitted in their proposals is protected from disclosure under the New York Freedom of Information Law shall:

a) insert the following notice in the front of its proposal:

“NOTICE

The data on pages ___ of this proposal identified by an asterisk (*) contains technical or financial information constituting trade secrets or information the disclosure of which would result in substantial injury to the proposer’s competitive position.

The proposer requests that such information be used only for the evaluation of the proposal, but understands that any disclosure will be limited to the extent that the County considers proper under the law. If the County enters into an agreement with this proposer, the County shall have the right to use or disclose such information as provided in the agreement, unless otherwise obligated by law.”

and

b) clearly identify the pages of the proposals containing such information by typing in bold face on the top of each page "*** THE PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW.**"

The County assumes no liability for disclosure of information so identified, provided that the County has made a good faith legal determination that the information is not protected from disclosure under applicable law or where disclosure is required to comply with an order or judgment of a court of competent jurisdiction.

The contents of the proposal which is accepted by the County, except portions "Protected from Disclosure", may become part of any agreement resulting from this RFP.

EFFECTIVE PERIOD OF PROPOSALS

All proposals must state the period for which the proposal shall remain in effect (i.e. how much time does the County have to accept or reject the proposal under the terms proposed). Such period shall not be less than 180 days from the proposal date.

SCHEDULE "B"

STANDARD INSURANCE PROVISIONS

The County of Erie Standard Insurance Certificate can be found and data entered into the form at:
http://www2.erie.gov/law/sites/www2.erie.gov.law/files/uploads/pdfs/EC%20Final%20Cert_revised.pdf

SCHEDULE "C"

ERIE COUNTY'S OUTSIDE COUNSEL GUIDELINES

Outside Counsel Guidelines – County of Erie

(Effective 1/1/16)

I. Introduction: Applicability and Purpose

These Guidelines apply to all outside counsel retained by the County of Erie (the “County”) or any of its officers, employees, elected officials, or agents. These Guidelines are intended to ensure that outside counsel provide high-quality legal service and account for their work in a professional and transparent manner, while at all times maintaining confidentiality and remaining mindful of the necessity of conserving taxpayer-funded public resources. Outside counsel will be given a copy of these Guidelines at the inception of an engagement, and will be expected to know and strictly adhere to the Guidelines and to require all attorneys and support staff participating in the matter to also adhere to the Guidelines (e.g., timekeepers, billing staff who create invoices). The Guidelines also apply to matters currently being handled by outside counsel.

II. Case Management

Absent extreme urgency, all filings/submissions must be submitted to the County Attorney’s Office for review before filing (preferably via e-mail unless the materials are extremely voluminous, i.e., SJ motions, in which case the supervising Assistant County Attorney should be consulted). The document should be submitted for review at least three business days before it will be filed/submitted. All major strategic decisions (i.e., whether or not to file a dispositive motion, which depositions to take, etc.) must be discussed with the County Attorney or supervising Assistant County Attorney. Absent advanced written permission, the County Attorney’s Office will not pay filing fees.

a. Initial Suit Report:

Within thirty (30) days of receipt of the file, an initial suit report shall be provided to the County Attorney that includes the following:

- i. Identification of parties;
- ii. Venue;
- iii. Estimated date of trial;
- iv. Brief summary of the case, including summary of allegations;
- v. Factual basis for claim;
- vi. Information developed during preliminary investigation;
- vii. Evaluation and analysis of liability and damages;

- viii. Brief discussion of legal issues and affirmative defenses interposed;
- ix. Potential exposure (Probable (50%+), Possible (20% - 49%) or Remote (0 – 19%));
- x. Range of settlement value, if determinable; and
- xi. A copy of the Answer and/or alternative pleading(s) shall be provided with the initial suit report.

b. Litigation Plan:

A litigation plan shall be provided to the County Attorney within forty-five (45) days of receipt of the file. The litigation plan shall identify each activity proposed and the anticipated cost for each activity, the potential for early disposition, recommendations for ADR/arbitration/settlement; discussion of when motions may be appropriate and their probable success and an estimate of a trial date.

c. Status Updates:

Status updates shall be provided on June 30th and December 31st. These updates shall include, where applicable, a discussion of all significant developments in the case including discovery served and received, status of motion practice, updated liability evaluation and investigation, etc.

d. Pleadings:

Copies of all pertinent pleadings (Summons, Complaint, Bill of Particulars, Notice(s) to Admit, Interrogatories, Interrogatory Responses, Motion for and responses to Summary Judgment, etc.) shall be provided to our office at the time they are served.

e. Depositions:

Our office shall be provided with copies of any and all deposition summaries within ten (10) business days after the deposition. These reports shall include a description of the witness' appearance; evaluation of the witness' credibility; the witness' date of birth; a summary of the witness' testimony; and the evaluation of the impact of the witness' deposition on the case.

f. Trial Reports:

Trial reports shall be provided to our office **sixty (60) days** prior to the start of trial and shall include the following details:

- i. Plaintiff's name;
- ii. Defendant's name;
- iii. Venue;
- iv. Trial date;
- v. Jury or non-jury trial;

- vi. Recommendation of settlement. If so, how much;
- vii. Evaluation of anticipated outcome of a trial, including possible verdict range and/or probability of defense verdict. If so, probable verdict value;
- viii. Injuries;
- ix. Special damages;
- x. Comparative negligence;
- xi. Key elements of plaintiff's case;
- xii. Witnesses that will support plaintiff's case and summary of their anticipated testimony;
- xiii. Credibility of plaintiff's witnesses;
- xiv. Key elements of defense;
- xv. Witnesses that will support defense and summary of their anticipated testimony;
- xvi. Anticipated trial motions;
- xvii. Expert witnesses and their anticipated testimony;
- xviii. Most recent demand; and
- xix. Most recent offer;

g. Post-Trial Reports

Upon completion of the trial, a post-trial summary report is required. An analysis of possible appeals or post-trial motions shall be included in your report.

h. Staffing and Supervision of Matters Sent to Outside Counsel

i. Attorneys

When it retains outside counsel to work on County matters, the County Attorney's Office expects that the specific lawyer(s) with whom the engagement is established ("lead counsel") will be directly and intimately involved in that matter throughout its course, unless the County Attorney agrees otherwise in writing. Lead counsel may not assign additional lawyers to any County matter without prior written approval from the County Attorney, and will not bill time expenditures for such lawyers absent such approval.

The County Attorney's Office expects that outside counsel will not:

- Overstaff matters;
- Shift assigned personnel, except when absolutely necessary;
- Charge for learning time of newly assigned lawyers when a shift in personnel is warranted;
- Authorize premature or peripheral legal or factual research;
- Hold non-substantive internal conferences;
- Submit charges at a rates that exceed the rate approved by the County Attorney; or

- Charge for routinely digesting, abstracting, or summarizing documents and depositions, absent specific tasks through persons who are either over-qualified (e.g., routine document review by a senior lawyer) or under-qualified (e.g., extensive research of general principles of law by junior associates).

The County will only pay for one (1) hour for the preparation and submission of an audit letter.

ii. Paralegals

Examples of activities that a paralegal should generally perform are:

- Preparing first drafts of basic forms and documents;
- Preparing subpoenas or notices for depositions, entry of appearance, substitution of counsel, interrogatories, requests to produce, jury trial demands, and other routine litigation documents;
- Summarizing answers to interrogatories;
- Preparing records requests and subpoenas;
- Proofing documents bates stamped by non-billing staff;
- Summarizing employment and other records;
- Abstracting or digesting depositions;
- Summarizing document production;
- Organizing materials that require professional judgment (a detailed billing description is required- a billing description merely stating “organizing materials” will be interpreted as administrative and, thus, non-billable);
- Organizing and re-organizing files that involve case documents such as separating and cataloguing responses to requests for production of documents (a detailed billing description is required- a billing description merely stating “organizing files” will be interpreted as administrative and, thus, non-billable);
- Indexing file material if professional judgment with respect to categorization is required;
- Preparing and filing UCC statements;
- Ordering searches such as title or legal records searches;
- Ordering public records documents for closings; and
- Creating and organizing binders, notebooks (witness and trial), folders, files, etc.;

III. Settlement Authority

The Erie County Attorney retains sole authority to settle or compromise all litigated matters

under the Erie County Charter and no settlement agreement can be entered into without the County Attorney's prior written consent and approval. All civil legal matters involving the County, its officers and employees require that the County Attorney sign such settlement agreement.

IV. Compensation

a. Fees

Compensation shall be paid to the lawyer or law firm for all professional services actually performed in accordance with agreed-upon hourly rates.

i. Prohibition Against Reimbursement for Administrative or Clerical Functions

The County will only pay for work performed by attorneys or paralegals, and will not pay an hourly or flat rate or fee for work that is secretarial, clerical or administrative in nature, irrespective of the seniority of the person performing the task. Examples of such secretarial, clerical or administrative work include but are not limited to:

- Scheduling meeting and appointments;
- Making travel arrangements;
- Maintaining calendars;
- Filing, organizing or reorganizing files;
- Bates stamping documents;
- Date-stamping;
- Tabbing or indexing file materials (unless professional judgment as to the index categories must be used);
- Faxing documents;
- Photocopying documents;
- Proofreading documents;
- Scanning or coding documents;
- Pick-up or delivery of documents and records;
- Preparing documents for mailing or shipping;
- Ordering vendor services and providing instructions to vendors;
- Processing vendor bills;
- Collating;
- Data processing;
- Notice of filing;

- Organizing files for storage;
- Updating lists;
- Copying and binding documents;
- Inventorying documents;
- Preparing enclosure or transmittal letters; or
- Preparing invoices and discussing billing questions;

ii. Legal Research

Outside counsel must obtain prior approval from County Attorney's Office before conducting a legal research project that is expected to exceed five hours. The County does not pay for online research charges. When seeking approval, counsel should be prepared to address the following issues:

- The purpose of the research;
- Who will perform the research;
- Whether the research can be performed effectively by lower-level personnel;
- Whether the firm has previously conducted research on these or similar issues;
- Whether the attorney has access to prior research on the same topic; and
- The approximate number of hours needed to complete the research.

Outside counsel should not charge the County for routine research. The County Attorney's Office considers any matter of common knowledge among reasonably experienced counsel in the Erie County area routine research. Where circumstances exist that enable counsel to use counsel's data banks, brief bank, or existing work product, counsel should only charge the County for research connected with updating previously researched materials. The County Attorney's Office expects that counsel will use paralegals or junior associates for research matters, and avoid having partners or senior associates devote extensive time to research unless the complexity dictates as much. Counsel should forward copies of research products that are prepared for a County matter to the County Attorney's Office.

iii. Office Conferences

Intra-office conferences that deal with substantive issues pertaining to the matter are reimbursable when outside counsel provides a thorough description of the purpose of the conference. Generally, no more than two staff members should bill for an intra-office conference. The County will only pay for reasonable amounts of time expended on such conferences.

iv. Reviewing Files

Outside counsel shall not charge the County for general diary or status file reviews. Similarly, counsel shall not bill the County for file reviews if an event does not precipitate a file

review (such as a telephone call or receipt of correspondence) or does not result in the creation of any tangible work product. The County will not pay for the review of a file by a party who is merely supervising the work of another law firm employee. The County Attorney's Office considers such supervision to be part of the firm's overhead and already contained in the firm's hourly rate structure. The County Attorney's Office will not authorize payment for a billing charge that states "file review" without more detail as to the purpose.

The County will not pay for time spent by newly assigned attorneys or paralegals to familiarize themselves with a matter on which staffing has changed while the matter is in progress. If, however, the change in staff was made at the request of the County Attorney's Office, the County will pay reasonable costs associated with reviewing the files (unless the request was made for cause). Any billing entry for file reviews associated with staff changes should state that the County Attorney's Office approved the staff change and associated file review and list who approved the staff change.

b. Costs

Upon presentation of appropriate back up or supporting documentation, the County will reimburse the lawyer or law firm for reasonable costs and expenses incurred during the course of providing legal services including express mail, long distance telephone charges, postage, and photocopying charges (at no more than \$0.10 per page); provided however, that individual reimbursable costs and expenses shall not exceed two hundred fifty dollars (\$250), unless prior approval is obtained. Costs for travel within Erie County, courier charges, computerized research, and telefacsimile charges shall not be reimbursable by the County.

c. Retention of Experts, Unusual Expenses and Travel

Prior written approval is required for the retention of all experts and any expenses exceeding \$2,500 to be incurred during the course of litigation. Additionally, all travel outside of Erie County requires advance approval and travel time for the lawyer shall be billed at one-half the hourly rate.

In addition, for any matters filed in State Supreme Court, the County does NOT have to pay filing fees.¹ Any charges on the billing invoice for such fees will not be reimbursed.

d. Invoices

All invoices shall be submitted on a monthly basis and include detailed individual itemized activity(ies), which shall include the date, time unit, the assigned staff, and the value of the unit of time along with a description of the work performed.

The County will not pay for "block billed entries," that is, a line item with a single time charge for multiple activities or disbursements. A time charge must accompany each fee

¹ Pursuant to CPLR § 8017.

activity, and outside counsel must itemize each disbursement entry. For example, the following format is not acceptable:

- 10/2/00 Phone conference with Hargrove re deposition; conference with client re same; prepare substantive changes to Answer; attend deposition of Hargrove.
 - o 8.00 Hours

The following example represents an acceptable breakdown of those activities and disbursements:

10/2/00	J.A.	Phone conference with witness Hargrove re deposition (.20); conference with client re same (.60); prepare substantive changes to Answer (3.2); attend deposition of Hargrove (3.00); Pre-approved travel, one hour, to Rochester (.5); Pre-approved travel, one hour, from Rochester to Buffalo (.5);	Hours 8.0	Charge \$1600.00
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Outside counsel should clearly show the total of the current bill and also include a running total for the matter to date. Prior balances or payment history should be shown, if at all, on a separate page. Outside counsel must include with the statement both time sheet or diary detail for time charges and copies of invoices or internal data compilations for all disbursements.

The following are examples of inadequate time descriptions:

- “Conference regarding case and issues”;
- “Review and conference regarding documents”;
- “Telephone re documents and various issues”;
- “Conference re strategy”; and
- “Review papers”.

Submission of bulk time entries that are not sufficiently itemized per time unit and per assigned staff will be returned for correction and resubmission. Reported failure to comply may result in non-payment of charges.

Each invoice must contain:

- i. the County assigned file number;
- ii. the matter name or description;
- iii. a unique invoice number;
- iv. the law firm’s taxpayer identification number;
- v. the inclusive dates covered by the bill;
- vi. the date of the invoice;
- vii. the date(s) of service;

- viii. hourly rate for each attorney, paralegal, expert or other professional;
- ix. Contain the individual itemized activity(ies) as set forth above;
- x. Separately itemize the court filing fees and costs, witness fees, court reporter fees, advances and previously approved out-of-county travel; and
- xi. List the time keepers on a separate sheet.

e. Approval

All charges, expenses, and costs incurred in performing the legal services as described herein and in the Agreement are subject to approval by the County Attorney.

V. Conflict of Interest

Where outside counsel is retained because the County Attorney has declared a conflict of interest, the Guidelines must be complied with, but the entity/person to whom such reporting shall be made shall be the party(ies) represented by outside counsel or, at the discretion of the County Attorney, a third-party administrator selected by the County Attorney (with copies to the represented party).

The County Attorney does not routinely waive conflicts of interest. Counsel who request a conflict of interest waiver must do so in writing. Such a request must include an identification of the cases or matters that create a conflict and the reasons why counsel believes that a waiver is appropriate, including an analysis of the applicable ethical rules and guidelines.

**Appendix A: Invoice
Format**

LAW FIRM NAME

County of Erie
Attn.: Michael A. Siragusa
Erie County Attorney
95 Franklin Street, Suite 1634
Buffalo, NY 14202

Invoice # 99999
Attorney Name
Invoice Date

Matter Name: Important County Matter
County Attorney File #: 99-20110001
August 2011 Invoice

<u>Date</u>	<u>Int</u>	<u>Description</u>	<u>Hours</u>	<u>Value</u>
8/1/2011	SL	Phone conference with witness Hargrove re Deposition (.2); Conference with client re Same (.5).	.7	\$122.50
8/15/11	A L	Prepare substantive changes to Answer (3.2).	3.2	\$400.00
8/31/11	SL	Attend deposition of Hargrove (3.0); Pre-approved travel, one hour, to Rochester (.5); Pre-approved travel, one hour, from Rochester	4.0	\$700.00
		Services Rendered	7.9	\$1,222.50

Costs

8/1/11	SL	Long distance telephone charge		\$ 3.21
8/15/11	AL	Copying Fee- Answer		\$ 2.10
		Costs		\$ 5.31

**Services and Cost
Summary**

Professional	Rate	Hours	Value
Lawyer, Senior	175.00	4.7	\$822.50
Lawyer, Associate	125.00	3.2	\$400.00
Services		7.9	\$1,222.50
Costs			\$ 5.31

Current Invoice Total **\$1,227.81**
Fed. Tax I.D. 99-9999999