



CITY OF RICHMOND
OFFICE OF THE CITY ATTORNEY
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ALLEN L. JACKSON
CITY ATTORNEY

November 24, 2014

The Honorable Charles R. Samuels
President of Richmond City Council

The Honorable Ellen F. Robertson
Vice President of Richmond City Council

The Honorable Jonathan T. Baliles
The Honorable Christopher A. Hilbert
The Honorable Kathy C. Graziano
The Honorable Parker C. Agelasto
The Honorable Cynthia I. Newbille
The Honorable Reva M. Trammell
The Honorable Michelle R. Mosby
Members of Richmond City Council

The Honorable Dwight C. Jones
Mayor of the City of Richmond

RE: Report of the Office of the City Attorney

Dear Members of Council and Mr. Mayor:

I am providing this quarter's report as an annual review so that it can be available as the process of preparing the FY2015-2016 budget gets under way. The contents will summarize the activities of the Office during the twelve-month period ending September 30, 2014 (hereafter simply "2014") and discuss specific activities occurring during the quarter.

Overview of the Office

The fundamental mission of the City Attorney's Office pursuant to Section 4.17 of the City Charter is to provide legal advice and services to the City Council, the Mayor, the Chief Administrative Officer and all departments, boards, commissions and agencies of the City in all matters affecting the legal interests of the City. In conjunction with this mission, the Office renders legal opinions in writing when requested and prepares ordinances and resolutions on behalf of members of the Council and the Mayor for introduction and consideration by the Council, including rendering legal opinions as to their form and legality. Further, the Office defends the City, the Council or any member thereof, any officer or employee of the City, and any trustee or member of any board or commission appointed by the City Council in City-related legal proceedings where they may be named as a defendant.

An organizational chart is attached for your information. The Office designates a specific attorney as the primary contact for every department and agency it represents and for certain specialized subject matter areas. The current primary contact charts are also attached.

The Governance and Finance Division prepares most Council legislation, whether its patron is a member of the Council or the Mayor, and monitors actions of the General Assembly that may require or permit changes to the City Code. It provides direct representation to legislative branch agencies (City Assessor, City Clerk and Council Chief of Staff), to most of the City's internal services departments (Budget and Strategic Planning, Finance, Information Technology and Procurement Services), and to the Registrar. It is also assigned primary responsibility for Conflict of Interests Act issues.

The Human Services Division provides legal representation to the Department of Social Services, primarily in litigation of child abuse and neglect cases. The group also acts as general counsel to the Department of Parks, Recreation and Community Facilities and the Department of Justice Services.

The Operations and Development Division provides direct representation to several executive branch, "line" agencies (Economic & Community Development, Planning and Development Review, Public Utilities and Public Works), plus the Economic Development Authority and Greater Richmond Transit Company. It also has primary responsibility for assisting with public records requests under the Freedom of Information Act.

The Civil Litigation Division provides legal representation to the City or its employees in the defense of claims, i.e. general civil litigation, workers' compensation and human resources matters. It provides direct representation to the Fire Department, Human Resources, the Retirement Board and the Library Board.

The Special Litigation and Public Safety Division handles complex litigation on a case by case basis, including tax claim litigation (most commonly real estate tax refund matters), and oversees the Office's practice in appeals courts. It provides direct representation to the City Auditor, and is also responsible for handling the legal services demanded by the City's heightened focus on code enforcement, tax sales and other tasks related to blight abatement. Should this Office ever be reassigned responsibility to function as general counsel to the Police Department, those services would be incorporated here.

Initiatives in 2014

Staff compensation. In February, 2013, I asked the Department of Human Resources to conduct a market study of the salaries of attorneys in the Office. Its study showed below market disparities in average salary levels ranging from an average of 8% for Assistant City Attorneys I to 15% for Assistant City Attorneys II (working titles Senior Assistant City Attorney) and 31% for Senior Assistant City Attorneys (working titles Deputy City Attorney). Later analysis showed that the indicated disparity for Assistant City Attorneys I was skewed by the number of

attorneys in this Office having three years or less experience; the average salary level for the experienced members of this group fell within 5% of the market average indicated by the study.

During the budget process for FY2013-2014 and FY2014-2015, Council agreed to use a multi-year phased approach to address the disparities and begin to bring the average salary level of each group of attorneys to 95% of the indicated market average. Taking into account funds provided by the Council in both fiscal years, average salary level disparities for Senior Assistant City Attorneys ("Deputies") were reduced in these first phase adjustments from 31% to 17% and for Assistant City Attorneys II ("Senior Assistants") from 15% to 9%.

Unfortunately, during the intervening time, competing localities did not remain static. A more recent survey indicates that much remains to be done, including adjustments to the City's salary scales. Those scales fall short for all attorney positions both in minimum salary levels, by a low of 7% for Assistant City Attorneys I, and in maximum salary levels, by a high of 18% for Deputy City Attorneys. I hope that during the upcoming budget process the Council will again favorably consider providing relief so that this Office can be competitive and retain skilled attorneys.

Recodification and City Code supplementation. The 2013 biennial budget process also added funding to resume supplementation of the City Code, which had halted in 2011 when the City's contract expired, and to begin recodification, which was last accomplished in 2004. Based on historical experience, we projected a two-year timeline. Following a competitive process overseen and assisted by Procurement Services, the City selected Municipal Code Corporation in June, 2014, to continue as the vendor. Supplementation for legislation through July 14, 2014, was posted October 17, 2014, and will henceforth take place on a regular basis. The work plan developed pursuant to the newly awarded contract calls for recodification to be completed on or before June 30, 2015, i.e., on schedule.

FOIA training. In February, March and April, 2014, we presented a series of training sessions for City staff responsible for responding to records requests under the Freedom of Information Act, as we have done in prior years. This year, we added sessions for interested members of boards and commissions and an instructional component on FOIA's open meetings requirements. We plan to conduct training sessions again in February and March, 2015.

The Ten Basic Rules for "Clients" of Municipal Lawyers. Beginning in July, 2014, the Office began making presentations about the professional obligations of lawyers who work in municipal government from the perspective of those who use their legal services. We intend that these presentations will make users' expectations more consistent with rules governing the conduct of lawyers as promulgated by the Virginia Supreme Court. During 2014, we made four such presentations to various constituent parts of the Administration and hope to make more presentations in the coming year.

Continuing legal education. The Virginia State Bar mandates that every licensed attorney obtain twelve hours of continuing education credits each year. Our attorneys' law practices consist of subject matter unique to municipal lawyers and the unique application of generalized

subject matter to municipal governments. As a consequence, local government lawyers face limitations on the availability of relevant training, which often requires travel outside the City. In addition to training provided by the Office to City officials, our attorneys are regularly called upon to provide training to attorneys in the public and private sector bars. Fulfilling such requests, meeting mandatory minimum “CLE” requirements and other training consumed just under 500 hours of attorney time during 2014.

Ethics review. We continue to hold regular all-staff meetings on a quarterly basis. A permanent feature of the agendas of these meetings involves a review of some aspect of the rules of the Virginia State Bar governing the ethical conduct of attorneys and staff. For obvious reasons, we focus on how these rules apply in the special setting of a local government law office, and on the unique conditions presented by Richmond’s form of government. We regularly confront the difficult issues presented by the City Charter’s requirement that we represent all constituent parts of City government and our obligation to maintain the confidentiality of communications among those disparate interests.

Relocation of office space and consolidation. Beginning in April, 2012, we began working with the CAO’s office to analyze the Office’s utilization of space in City Hall and its needs for additional space. Our primary goal throughout the process was the relocation of the Office’s Human Services Division – four lawyers and four support staff – to City Hall from rented space elsewhere. In November, 2012, Council tentatively approved a plan to relocate the entire Office to the 4th floor of City Hall, subject to availability of funding. We have met on multiple occasions with the architects and the Administration’s project coordinator and had initially hoped to conclude the move sometime during calendar 2013. Then, due to delays in relocating current 4th floor occupants, we were pushed back to calendar 2014. We are now being told that the move will occur sometime in calendar 2015.

Services Provided by the Office

In the ordinary course of business, the use of legal services by different parts of City government varies over time. Especially over brief periods, these variations can be substantial. However, based on time records for 2014 compared to earlier years,¹ the Office’s top consumers of services appear to be reasonably consistent consumers from year to year. For 2013 and 2014, they consist of the following:

	<u>2014</u>	<u>2013</u>
Social Services	21%	19%
Public Utilities	19%	16%
Legislation & City Council Meetings	7%	9%

¹ Note that these calculations used unaudited, un-normed time records. In other words, because some lawyers are more diligent timekeepers than others, the relative contribution of lawyers engaged in certain areas can become skewed. We have not chosen to try to “fix” these records. Instead, we have focused on encouraging continued improvement in accounting for time so that, over time, these calculations will most accurately reflect the Office’s workload. Notwithstanding these qualifications, the figures presented here do provide a basic sense of how the Office spends its time.

Economic & Community Development	7%	14%
Public Works	6%	5%
Procurement Services	5%	4%
Planning & Development Review	5%	5%
Finance	4%	4%
Council Offices	3%	3%
Police	2%	5%
Parks, Recreation & Comm. Facilities	2%	1%
All Others	19%	15%

The one exception to consistent use of services, as I have noted in recent quarterly reports, is the Department of Economic and Community Development, whose percentage of total hours in 2014 dropped by about 50% from prior years.²

The preparation of legislation also provides a discrete measure of which parts of City government make use of the Office's resources. For 2014, with comparison shown to 2013, the major sources of requests for legislation were:

	<u>2014</u>	<u>2013</u>
City Council	53%	52%
Planning & Development Review	12%	8%
Public Works	8%	8%
Economic & Community Development	7%	8%
Budget & Strategic Planning	5%	6%
City Clerk (appointments)	1%	4%
Office of Chief Administrative Officer	1%	3%
All others	13%	11%

The chart reflects that the Council generated more than half of all legislation during 2014, consistent with its 52% rate in 2013, and that Planning & Development Review increased its requests by 50% over 2013.

Major Projects and Work Functions in 2014

Performance measures in government law offices often focus on metrics that may do little to inform about the actual quality of legal services. For example, a lawyer handling two cases of substantial complexity could be working harder and doing better work than a lawyer handling two hundred cases of minimal complexity, or vice versa. Nevertheless, certain traditional statistical reports can provide some insight into the legal services provided by a government law office. Consider the following:

² Since this Office does not provide general counsel to the Police Department, the decline in the percentage for that Department should be viewed merely as a lesser demand from litigation rather than an actual reduction in service.

- In 2014, the Office defended six “new major cases” (usually, cases where the amount sued for is \$1 million or more). Only two of them are new this quarter: Judkins v. Dalal, \$10.7 million (former DCAO’s suit for defamation and gross negligence against the City Auditor), and Brown v. City, \$2.35 million (claims under state constitution related to the Bayne suit in next paragraph, subsequently dismissed by the Circuit Court with petition for appeal to the Virginia Supreme Court now pending).
- Defined in terms either of the amount sued for (\$1 million or more) or of the amount paid (\$100,000.00 or more), the Office closed eleven “major cases” in 2014. Not previously reported are: Reaves v. City, \$6 million (property damages allegedly caused by City contractor, City dismissed from case on preliminary motion); Bayne v. Brown, \$1.85 million (allegedly defamatory statements made by police sergeant in connection with pre-election visit by First Lady of the United States, voluntarily dismissed by plaintiff); and Portz v. City, \$1 million (automobile accident involving police officer, settled for \$138,000).
- 60 new liability defense files were opened in 2014, as compared to 80 new files in 2013. Currently pending lawsuits demand just over \$63 million, although our opinion is that the City’s actual exposure to liability is far, far less.
- Of the 446 Department of Social Services files opened in 2014, as compared to 329 new files in 2013, 48% involved emergency removal orders. Our lawyers appeared for 1,663 hearings, as compared to 1,008 in 2013, or on average of almost seven hearings per day every work day of the year.
- 14 new charges were brought by current or former employees to the Equal Employment Opportunity Commission, versus 18 new charges in 2013, with 6 being dismissed, one settled and the remainder still pending.
- 40 new workers compensation cases were filed (versus 41 in 2013) and 20 were closed.
- Only one hearing was held before the Personnel Board to review disciplinary actions against employees, versus seven in 2013.

Blight Abatement

The City’s heightened attention to blight abatement efforts included the addition of a full-time paralegal to the staff of this Office effective January 1, 2014.

In the area of tax sales, we increased our caseload of active files from 341 in 2013 to 431 in 2014. Cases pursued in 2014 caused delinquent taxes to be recovered on 61 parcels, either

through auction sale or through owner action, as opposed to just 29 parcels in 2013. We plan further increases in 2015 and 2016, with the long-term goal of eliminating the backlog of cases.

Delinquent taxes paid on tax sale parcels in 2014 amounted to just under \$992,000.00, versus about \$350,000.00 in 2013. The assessed value of properties returned to the tax rolls in 2014 exceeded \$2.1 million; we do not have comparable figures for 2013 properties, but we have modified our file system so that we track this figure in and into future years. We have noted that in about 2% of tax sale cases, the assessed value of a property actually declines following the sale; we believe this phenomenon results from new owners seeking reassessments based on the poor condition of the properties.

In the area of building and zoning code enforcement, our work varies directly with the vigor with which code enforcement officials take action. Our days in court for 2014 were up from 115 in 2013 to 135, and the number of separate properties involved increased significantly, from 157 to 232. However, the number of charges and motions prosecuted fell slightly, from 322 to 300, distributed among the major types of offenses as follows:

	<u>2014</u>	<u>2013</u>
▪ Building Code:	167	170
▪ Environmental:	41	40
▪ Finance (tax & BPOL):	6	39
▪ Fire:	2	19
▪ Zoning:	4	13

I am constrained to emphasize that we have the capacity to handle additional code enforcement matters. To reiterate, our workload depends directly on administrative practices over which we have little control.

Value of Services

Another measure of performance often considered is the value of having legal services performed “in-house.” Such a value can be calculated by projecting a hypothetical cost as though the services had been procured from a private law firm. A statewide legal publication reported in December, 2013, that average hourly rates in the private sector in Richmond for lawyers performing work comparable to the work performed by this Office range from \$200 to \$400 per hour, with a median of \$543 per hour for lawyers with 21 years or more experience. Richmond area rates increased between 2010 and 2012 by 8% to 11% overall, with senior lawyers seeing an average increase of almost 19%.

For comparison purposes, the City’s annual budget for this Office in 2014, allocated across our 18 full-time lawyers, equates to less than \$105.00 per hour, the same rate as last year.

Much of the work performed by the Office consists of repetitively handling “routine” matters whose burden becomes apparent only when considered in the aggregate. Using a hypothetical, bottom end rate of \$200.00 per hour, the following practice areas each, in

ascending order, would have cost in excess of the indicated amounts if they had been handled by outside counsel instead of our own attorneys, again based on unaudited, un-normed time records:

\$50,000.00

Freedom of Information Act
Land use regulation

\$100,000.00

Employment litigation
Workers' compensation claims

\$250,000.00

Tax sales & code enforcement
Real estate transactions
Council legislation and meetings
Procurement and contracts

\$500,000.00

Liability litigation

\$750,000.00

General counsel to City departments and officials
Social services litigation

Still using the hypothetical \$200.00 per hour rate, the following discrete matters (most of which overlap the practice areas listed above) would have cost in excess of the indicated amounts, again in ascending order:

\$10,000.00

Bryan Park stormwater management project
DPU Metrocare program
Rehabilitation tax credit ordinance amendments
Bond counsel RFP and contract award
Virginia Power v. City (tax litigation, pending in Richmond Circuit Court)
12th Street water main break claims (damage to VCU's Sanger Hall)
Monroe Park Conservancy lease
Columbia Gas transmission contract restructuring
Fairmount Pool contract claim
Virginia Stormwater Management Program ordinance
2014 General Assembly
Redskins Training Facility issues
Woodson v. City (jail conditions litigation, pending in U.S. District Court)
Stone Brewery development project
Judkins v. City (race and gender discrimination, charges pending at EEOC)
Old Warwick Road / Southside Community Center land transaction

\$25,000.00

Conoco Phillips natural gas supply contract
FY2014-2015 City Budget
RMA baseball stadium land transaction and lease to Squirrels

\$50,000.00

Richmond On The James CSO relocation agreement
Shockoe Baseball Stadium project (exclusive of time spent by outside counsel)
Simon v. City (Title VII litigation, settled)

Note that no single purpose file approached the time spent last year on the Redskins Training Facility Project, which alone consumed more than 1,000 hours of attorney time with a “value” in excess of \$200,000.00.

Representation of “Outside Agencies”

Greater Richmond Transit Company. GRTC is a public service corporation whose Board consists of an equal number of members selected by the City and by Chesterfield County. In accordance with section 2-134 of the City Code, this Office provides representation to GRTC, primarily acting as general counsel to its Board and in defending claims against the company and its employees. The company’s overall consumption of legal services is relatively small, less than 2% of our time.

Economic Development Authority. The EDA is an independent political subdivision created in accordance with the state law governing industrial development authorities. The Office serves as general counsel to the EDA Board, again pursuant to section 2-134 of the City Code. Although direct services to the EDA are minor, less than 1% of our time, the role played by the EDA in City economic development projects has been substantial.

Use of Outside Counsel

As a general rule, this Office employs outside counsel in only three circumstances: because a matter requires significant expertise that is too rarely needed to maintain in-house, or because a matter requires resources greater than can be handled by a staff the size of this Office, or because of a conflict of interests, usually between the City and an employee who is also named as a defendant in litigation.

In 2014, exclusive of bond counsel and attorneys assisting DPU with CSO and FERC issues, the City employed attorneys from eight law firms in fifteen cases. The total expended amounted to just over \$1.1 million, about the same as in 2013. Two thirds of that amount arose in three cases, two involving allegations of unconstitutionally harsh physical conditions at the city jail and the third involving a police shooting. One of the jail conditions cases resolved last year, with the funds for counsel not being expended until this year. The other two cases remain pending in the United States District Court.

Issues For 2015

Attorney compensation. We greatly appreciate Council's support for a pool of funds for each of the prior and current fiscal years with which to make market-based adjustments to the salaries of attorneys in the Office. We hope to continue to address the issue of below-market average salaries in the upcoming biennial budget plan.

Potential request for additional attorney for economic development matters. In the preparation of the proposed budget of this Office for Fiscal Year 2013-2014, we identified a need for a new position by reason of sustained excess demands for legal services in connection with economic development matters. Based on discussions I had had with the CAO, we were hopeful that the Administration would support this request for funding, but it eventually determined not to do so.

Even with the decline in services demanded by economic development matters generally, the Shockoe Baseball Stadium and Stone Brewery projects presented such complexity that they threatened to consume more resources than we had available if we were to continue managing other more routine matters in a timely fashion. Accordingly, in both matters, we found it prudent, after consulting with the Administration and the EDA, to procure assistance from outside counsel. Depending on the complexity of and haste associated with future proposed transactions, similar engagements may prove to be necessary regardless of whether we have additional staff and regardless of whether overall economic development activities return to their 2013 levels. Given the expense of outside counsel against the cost of an additional attorney in-house, it may make better sense for the Office to take on additional capacity. We will have further discussions both internally and with the Administration and make a recommendation as a part of our budget proposal for the upcoming biennial budget plan.

Representation of Richmond Police Department. In the early 1990s, the City authorized RPD to create a position reporting directly to the Chief of Police which is technically called "executive advisor" but which is commonly known as "general counsel." The position description as last revised in 2008 requires a licensed attorney at law, whose job is to provide advice to the Chief of Police and the Department on "legal, policy, legislative and personnel matters."

RPD's general counsel has no reporting relationship to the City Attorney, but rather is expected to "coordinate" all "non-internal matters" with the City Attorney's office. Note that this Office's legal representation of the Police Department as reported above consists almost entirely of litigation services, i.e. defending liability claims against the department or its officers and handling various human resources matters.

In establishing the position of general counsel, the City created a de facto split in the legal representation of RPD. I have been told that the perception that such an arrangement was needed arose because of a failure of communication between the City Attorney's Office and RPD in connection with a single serious incident. True or not, the City's obvious intent when it

split representation of RPD away from the City Attorney's Office was to ensure the availability of legal resources dedicated exclusively to RPD business.

Unfortunately, because the provision of legal services in a municipal government encompasses such a broad range of activities, a division of responsibility like this one inevitably creates an environment where the responsibility for providing advice on important legal issues can fall on no specific person. Further, a fundamental flaw exists in the system itself, where one of the largest and most important departments in City government receives the bulk of its legal advice from attorneys charged with professional duties of loyalty and confidentiality to the department rather than to the City as a whole.

Accordingly, based on concerns about ensuring accountability and the desired focus of professional advice, I again recommend that the City consider whether it is in its best interests to continue with such an inherently flawed system.

Conclusion

The Office looks forward to the challenges that it will face in 2015, and I hope you have found this report to be useful. If you have ideas for improvement in the report, or if you have questions about any of its contents, please let me know. On behalf of the Office, we look forward to working with you over the coming year.

Sincerely,

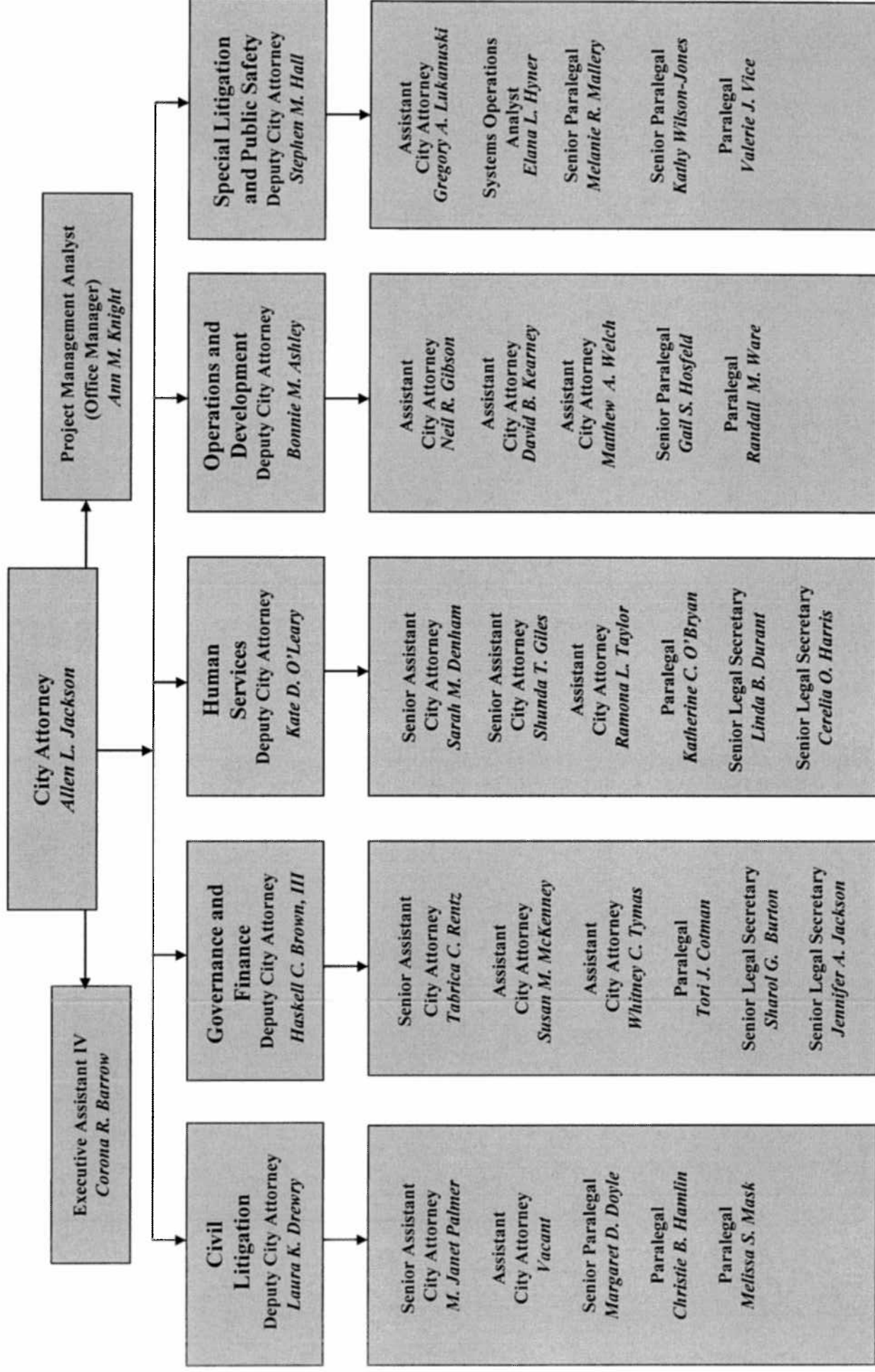
A handwritten signature in black ink, appearing to read 'Allen L. Jackson', written in a cursive style.

Allen L. Jackson
City Attorney

Attachments – 2

cc: Christopher Beschler, Acting Chief Administrative Officer

CITY ATTORNEY'S OFFICE



Office of the Richmond City Attorney

Departmental Primary Contacts

November 24, 2014

Animal Control	Mr. Lukanuski
Assessor	Ms. Rentz
Auditor	Mr. Hall
Budget	Mr. Brown
Capital Region Taxicab Advisory Board	Mr. Lukanuski
Chief Administrative Officer	Mr. Jackson
City Clerk	Mr. Brown
City Council	Mr. Jackson
Council Chief of Staff	Mr. Brown
Economic & Community Development	Ms. Ashley
Economic Development Authority	Ms. Ashley
Finance	Ms. Rentz
Fire	Ms. Drewry
GRTC (Board & Administration)	Ms. Ashley
Human Resources	Ms. Drewry
Information Technology	Ms. McKenney
Justice Services	Ms. Giles
Library Board	Ms. Drewry
Mayor	Mr. Jackson
OMBD	Ms. Ashley
Parks	Ms. Denham
Personnel Board	Ms. Drewry
Planning & Development Review	Mr. Welch
Police	Mr. Lukanuski
Procurement Services	Mr. Brown
Public Utilities	Mr. Kearney
Public Works	Mr. Welch
Retirement Board	Ms. Drewry
Risk Management	Ms. Palmer
Social Services	Ms. O'Leary
Sustainability	Mr. Kearney
Towing Advisory Board	Mr. Lukanuski
Voter Registrar	Ms. Rentz

Primary Practice Area Responsibilities

ABC	Mr. Lukanuski
Bankruptcy	Ms. Rentz
CAPS	Mr. Lukanuski
CDBG Programs	Ms. Ashley
Code Enforcement	Mr. Lukanuski
Conflict of Interests Act	Mr. Brown
Collections	Ms. Ashley
Contract Review	Mr. Brown Ms. McKenney
Council Legislation	Mr. Brown Ms. Rentz
DSS Litigation	Ms. O'Leary Ms. Giles Ms. Denham Ms. Taylor
Employment Litigation (administrative)	Ms. Drewry
Environmental Law Matters	Mr. Kearney
FOIA – Records	Mr. Welch
FOIA - Meetings	Mr. Brown
General Assembly	Mr. Brown Ms. Rentz
Land Use & Planning	Mr. Welch
Liability Litigation	Mr. Hall Ms. Palmer
Liaison To Excess Insurance Carrier	Ms. Drewry
Parking & Towing	Mr. Lukanuski
Permits, Property Maintenance & Zoning Enforcement	Mr. Lukanuski
Real Estate Transactions	Ms. Ashley Mr. Welch
Tax Delinquent Sales	Mr. Lukanuski
Workers Compensation	Ms. Drewry