

Department of Law  
Office of the County Attorney

**2010 Budget Presentation**

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County Executive

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Board of Legislators

## Mission Statement

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The mission of the Department of Law, Office of the County Attorney, is to respond effectively to the needs of County officers, boards, departments and agencies, regarding legal counsel and representation. The County Attorney is charged by law to serve as legal counsel to the County Executive, the Board of Legislators, and to the County and all of its constituent departments, agencies and boards. The mission of the County Attorney is achieved in a variety of ways, including: the rendering of legal advice to County officials and employees in order to assist them on various projects the County is undertaking or contemplating undertaking; the preparation and review of legal documents; the drafting of legislation; the rendering of legal opinions, and the advocacy of the County's interests in trial and appellate courts, including special administrative proceedings. In providing legal services to the County, the Office of the County Attorney endeavors to reduce actual and potential future liabilities and financial exposure of the County and to maximize receipts of monetary sums to which the County may be entitled. The Office of the County Attorney seeks to assure that the County workplaces are free of discrimination and harassment and that County contracts and business opportunities are awarded fairly and openly, with women and minorities having equal access.

In addition the Office of the County Attorney seeks to protect the interests of children, disadvantaged adults, and society from domestic violence and abuse. Our Family Court Bureau acts to safeguard children from acts of abuse and neglect and to establish and collect child support from legally responsible parents. The Office of the County Attorney presents cases of juvenile delinquency to the Family Court in order to protect the public from dangerous juveniles and to rehabilitate juveniles in order to assist them in growing into productive members of society.



## **Tax Levy**

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Currently, the Law Department's approved modified budget for 2009 is \$13,448,752. The 2010 Law Department Budget proposes an expense budget of \$12,927,606, which is a decrease of \$521,146 over the 2009 Modified Budget. Our 2010 Budget proposes a negative tax levy of (-1,748,220).

## **Expenditures**

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### Annual Regular (1010)

The 2010 Requested is \$242,672 greater than our 2009 Adopted Budget. This is due to salary increments and offset by the reduction of one position.

### Hourly (1200)

The 2010 Requested for our hourly account is \$8,625 which is a \$125 increase from our 2009 Adopted Budget due to an increase in the minimum wage.

### Overtime (1400)

The 2010 Requested is \$2,000 which is the same amount as in our 2009 Adopted Budget. This amount is based upon work performed by support staff on Election Day and the day after Thanksgiving, which are days the Law Department is required to work despite the County Offices being closed.

### Replacement Equipment (2300)

The 2010 Requested is a reduction of \$64,563 from our 2009 Adopted Budget. We are able to achieve these saving by eliminating the purchase of Law Book updates and renewals along with office equipment, software updates.

### Printing & Office Supplies (3600)

The 2010 Requested is a decrease of \$857 from our 2009 Adopted Budget based upon our reducing paper use.

### Postage Cost (3700)

The 2010 Requested is a decrease of \$209 from our 2009 Adopted Budget.

### Equipment Service & Rental (4070)

The 2010 Requested is an increase of \$4,000 from our 2009 Adopted Budget. This increase is related to our conversion to the West Law on-line service from our current Lexis-Nexis service. This allowed us to eliminate over 90% of our Law Book updates and renewals since they are now available through the West Law on-line service, thus resulting in a net savings of \$60,000.

### Membership Fees (4100)

The 2010 Requested is the same as our 2009 Adopted Budget.

#### Travel & Meals (4110)

The 2010 Requested is the same as our 2009 Adopted Budget.

#### OSHA Safety Program (4225)

The 2010 Requested is the same as the 2009 Adopted Budget.

#### Educational Training (4360)

The 2010 Requested is the same as the 2009 Adopted Budget.

#### Contractual Services (4380)

\$20,000 the 2010 Requested is the same as 2009 Adopted Budget.

#### Technical Services(4420)

The 2010 Requested is the same as the 2009 Adopted Budget. This expense includes the cost of the Labor Negotiator and Arbitrators. The breakdown of arbitration cases are as follows: 90% of our arbitration fees are attributable to contract grievance and disciplinary arbitrations held with COBA and its members (the other ten percent are attributable to PBA and CSEA contract grievances). In the case of PBA and CSEA, the costs of the hearings (which averages \$1,500/day or a 25% fee increase) are evenly split between the respective union and the County. In the case of COBA, the fees are split up to the point where the union has expended \$20,000 on arbitration fees in any given year. Once that threshold is met, the County assumes 100% of the costs for the remainder of that year. In 2007, the union threshold was met in mid-February. The increase in the number of arbitration dates can be attributed to several factors: 1) the expiration of the COBA and PBA contracts; 2) the limit on the number of COBA disciplinary arbitrations has been raised by agreement from 3 to 5 per month. COBA has taken advantage of this increase and since October of 2006, an average of four arbitration dates per month have been scheduled; and 3) there has been a sharp rise in the number of contract grievances filed by COBA that have proceeded to arbitration. The total has resulted in an 81% increase in the number of Arbitration hearings from 2006.

#### Litigation (4923)

The 2010 Requested of \$1,115,900 is a \$783,338 decrease from the 2009 Modified Budget. The amount requested for this account is as a result of a number of negotiated renewals which require specialized outside counsel as well as all costs related to the Anti-Discrimination Case which settled in September of 2009. In 2008, our Litigation Account was increased by **\$864,962** from our requested 2008 budget as a result of the costs related to the Anti-Discrimination Case being placed into our 2008 budget by the Board of Legislators. The cost of this case in 2008 is expected to reach \$1.7 million and in 2009 it is expected that the case will cost the County and in particular, the Law Department, approximately \$1,100,000.

#### Interdepartmental Charges

The 2010 Requested Budget is a increase of almost \$69,801 from the 2009 Adopted Budget. This is due largely to a decrease in the amount that IT charges for services, Data

Processing charges and charges for the Record Center storage.

## **Revenue**

The Law Department's hourly rate charged to all County departments for law services for the current year is \$139. The calculated rate for 2009 budget is \$140. This hourly rate represents all billable hours produced by our Assistant, Senior and Associate County Attorneys, however it excludes all hours produced by the Assistant Chief Deputy County Attorneys, Chief Deputy County Attorney and County Attorney.

### Interdepartmental Revenue (9508)

The 20010 allowed figure for Interdepartmental revenue for the Law Department is \$11,296,372. This is an increase of approximately \$242,302 over 2009 estimates.

### Departmental Revenue

The 2010 allowed revenue figure for Departmental revenue is \$2,574,600.

This is an increase of \$ 19,224 from 2009 estimates due to an increase in billable hours to Risk Management, Environmental Facilities and Westchester Community College. This is offset by a dramatic decrease in billable hours to PUA, since these matters are currently not being handled by the Law Department.

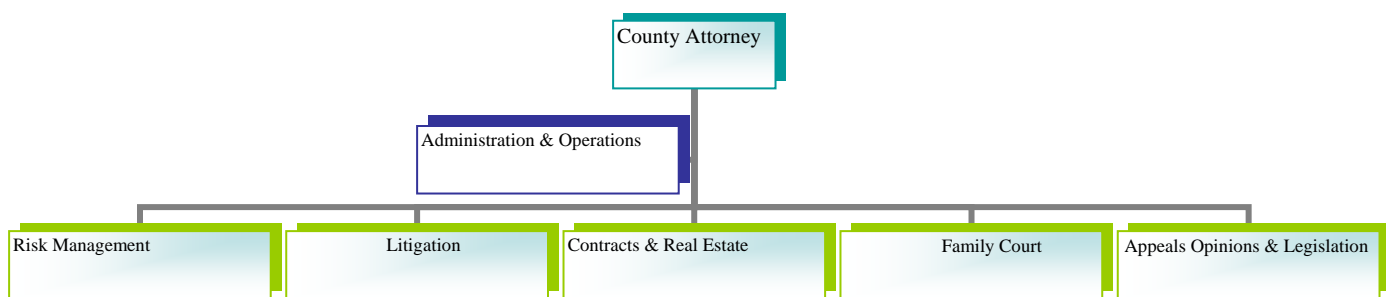
The increases in both Interdepartmental and Departmental revenue are due to the higher attorney hourly rate as well as the ever-increasing caseload for the Law Department. In particular, we anticipate performing extensive legal work related to: the continuing implementation of HAVA; negotiating, drafting and monitoring of Consent Orders with the New York State Department of Environmental Conservation regarding Biological Nutrient Removal (BNR), dams and sewer district issues; legal representation to the Department of Social Services based upon a substantial increase in cases involving child protection; and substantial work related to amending County personnel policies with the goal of increasing productivity while reducing expenditures.

# Introduction

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In 1937, the Westchester County Board of Supervisors created the Department of Law, to be headed by a County Attorney, who would be appointed by the County Executive with the approval of the County Board. The new Department was mandated to “have charge of and conduct all of the civil law business of the County of Westchester and its departments.”

The present structure of the Law Department reflects the constant striving to fulfill this broad mandate in the most efficient and responsible manner possible. The Law Department is divided into four bureaus, each of which is focused on the different components of the “civil law business” of the County. In addition to the four Bureaus, the Department is responsible for the Office of Risk Management, which evaluates and reviews the County’s risk exposure. The organization of the Department is summarized in the following chart:

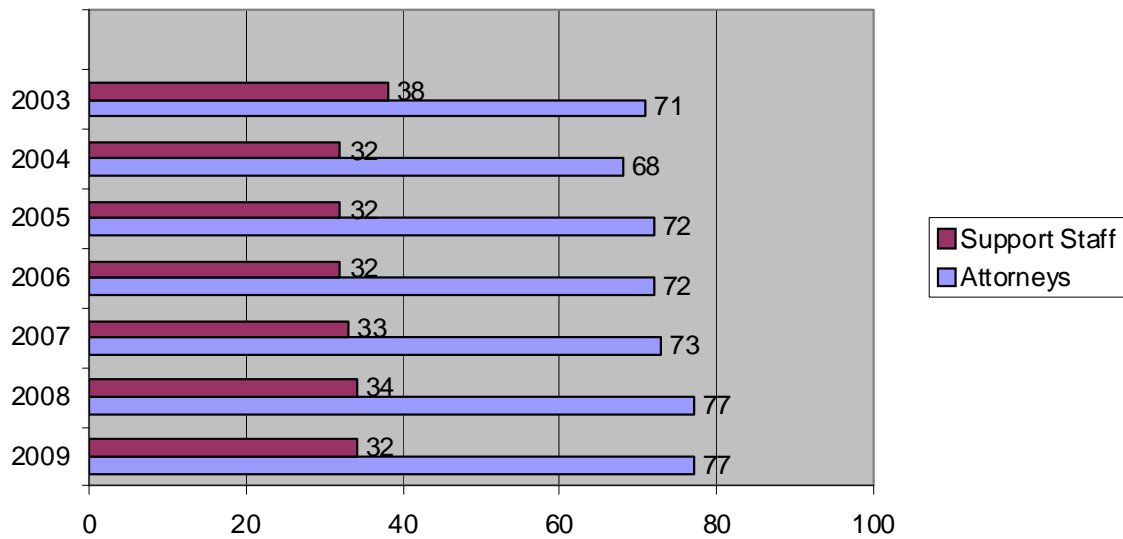


The Department of Law occupies approximately 23,000 square feet of space, utilizing the entire sixth floor and a portion of the second and seventh floors of the Michaelian Office Building. The Department is in proximity to the County Executive’s Office, the Board of Legislators, the Federal and County Court House Buildings, the District Attorney’s Office and many of the other County Departments that it serves.

The Law Department’s overall staffing level for 2008 has decreased by one employee for a total of 110 personnel. This number represents the number of authorized positions. The composition of the County Attorney’s office is shown below.

The Law Department staff consists of the following positions (including Risk Management):

### Law Department Staffing Levels



Title	Number of Positions
County Attorney	1
Chief Deputy County Attorney	1
Assistant Chief Deputy County Attorney	3
Director of Risk Management	1
Associate County Attorney	10
Senior Assistant County Attorney	20
Assistant County Attorney	42
Special Assistant to the County Attorney	1
Senior Risk Management Analyst	1
Management Assistant (Investigations)	1
Risk Management Analyst	1
Executive Secretary to the County Attorney	1
Program Specialist (Risk Management)	1
Paralegal	4
Sr. Info Systems Clerk	1

Title	Number of Positions
Office Asst. Word Processing	1
Messenger	1
Staff Assistant (Risk Management)	1
Accounting Control Specialist	1
Legal Secretary II	5
Legal Secretary I	9
Docket and File Clerk	1
Receptionist	1
<b>Total</b>	<b>109</b>

**Administration**

County Attorney	1
Special Assistant to County Attorney	1
Executive Secretary to County Attorney	1
Receptionist	1
Messenger	1
	<b>5</b>

**Appeals, Opinions**

Chief Deputy County Attorney	1
Associate County Attorney	3
Sr. Assistant County Attorney	1
Assistant County Attorney	1
Legal Secretary II	1
	<b>7</b>

**Family Court Bureau**

Asst Chief Deputy County Attorney	1
Associate County Attorney	2
Sr. Assistant County Attorney	9
Assistant County Attorney	24
Docket and File Clerk	1
Paralegal	1
Legal Secretary II	2
Sr. Information Systems Clerk	1
Legal Secretary I	3
Office Assistant Word Processing	1
	<b>45</b>

**Litigation Bureau**

Asst Chief Deputy County Attorney	1
Associate County Attorney	3
Sr. Assistant County Attorney	8
Assistant county Attorney	9
Management Assistant Investigations)	1
Paralegal	2
Legal Secretary II	1
Legal Secretary I	4
	<b>29</b>

**Contracts Bureau**

Asst Chief Deputy County Attorney	1
Associate County Attorney	2
Sr. Assistant County Attorney	2
Assistant County Attorney	8
Paralegal	1
Legal Secretary II	1
Legal Secretary I	2
	<b>17</b>

**Risk Management**

Director of Risk Management	1
Sr. Risk Management Analyst	1
Risk Management Analyst	1
Program Specialist	1
Staff Assistant (Risk Management)	1
Accounting Control Specialist	1
	<b>6</b>

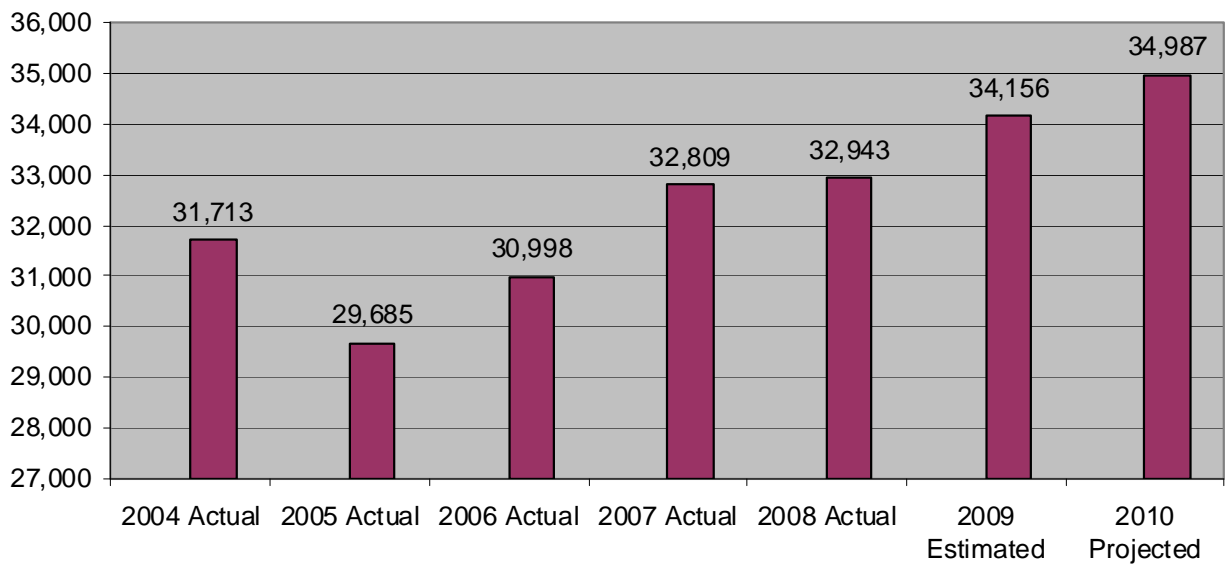
The 2010 Law Department Budget shows a reduction of one position for a total of 109 total staff, however, the number of cases continues to increase along with the complexity of the matters handled by the Law Department. Very often, the most complicated matters are also the most time sensitive. Managing these matters requires maximum effort and commitment by staff, with concomitant strain on personnel. The results of these efforts show in the number of notable successes achieved thus far in 2009 by the Office of the County Attorney. Pursuant to Chapter 158 of the Laws of Westchester County, only the County Attorney and her staff are authorized to provide legal services to the County and its Departments. In light of the increases in the caseload and legal mandates required by law with regard to protection of children and families, combined with the prohibition against any Department hiring their own attorneys directly to handle legal matters, nine of these attorney positions contained in the Family Court Bureau, one Legal Secretary I position and one Office Assistant Word Processor, are being funded by the Westchester County Department of Social Services.



**Revenues**

The increase in case levels is evident in all bureaus and involves all legally mandated services, including but not limited to family court proceedings, litigation defense of the County, legislation, contract preparation and review, appeals and advisory opinions.

**Number of Cases**



### **Breakdown of Cases by Bureau**

<i>Bureau</i>	<i>2007 Actual</i>	<i>2008 Actual</i>	<i>2009 Estimated</i>	<i>2010 Projected</i>
<b>Litigation</b>	3,572	3,602	3,747	3,950
<b>Appeals</b>	1,395	1,472	1,566	1,628
<b>Contracts</b>	10,596	10,483	11,023	11,244
<b>Family</b>	17,246	17,386	17,820	18,165
<b>Grand Total</b>	<b>32,809</b>	<b>32,943</b>	<b>34,156</b>	<b>34,987</b>

The Law Department generates two separate revenue streams:

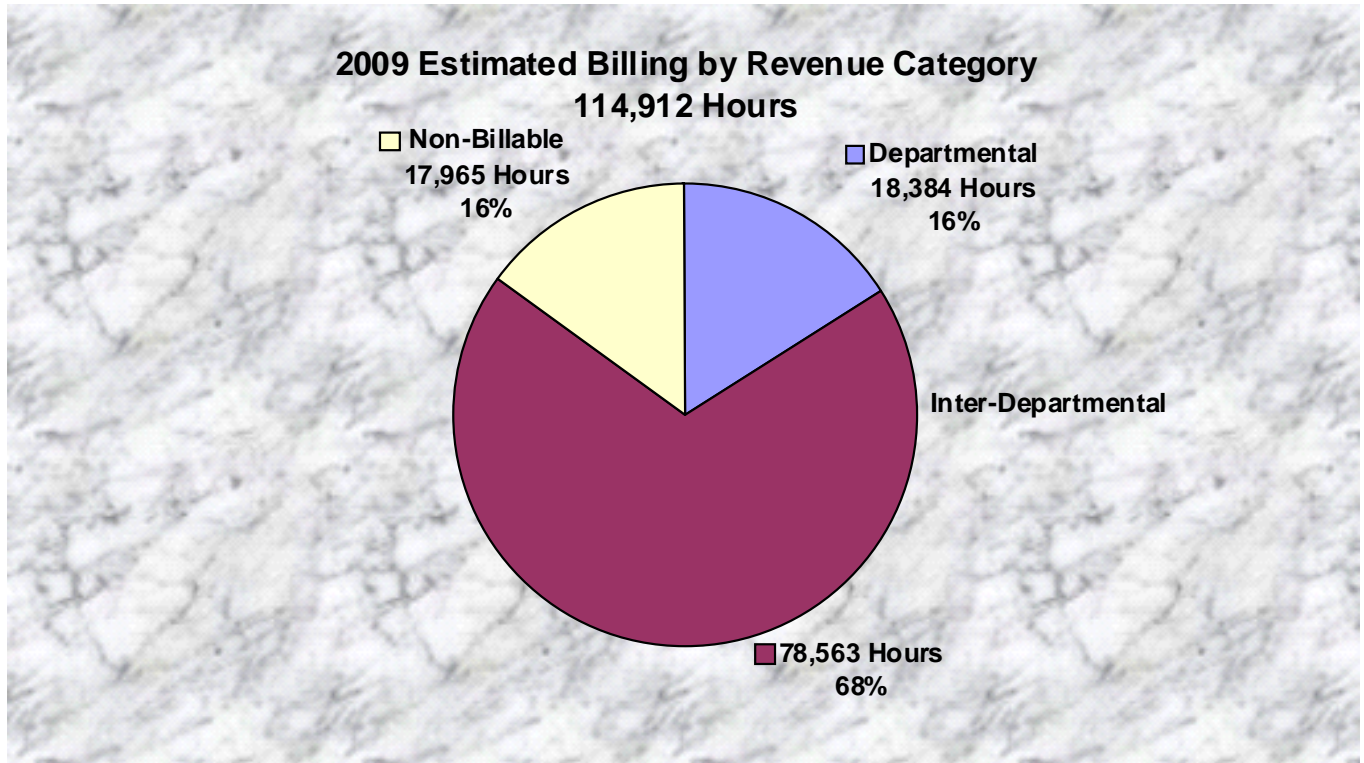
- Departmental revenues are generated through charges billed to other funds including the 6-N Fund, Sewer, Water, and Refuse Disposal District Funds and the Westchester Community College Fund. This billing is generated as a result of legal services that are provided by the Law Department to these entities.

- Inter-Departmental revenues are received from County departments for which the Law Department performs essential legal services. Departments included in this revenue stream include the following: Public Works, Human Resources, Public Safety Services, Parks and Recreation, Planning, County Clerk, Department of Social Services, Community Mental Health, the Budget Department, Finance, the Department of Health, Information Technologies, Probation, Corrections, Transportation, etc.

These billing charges are based on the number of hours that each attorney spends providing legal advice, research or services for each of these Departments on various matters. Charges are based on hourly rates derived from the Law Department's operating costs and these rates are established each year in conjunction with the Budget Office when the County's Budget is prepared. The hourly rate is based on the Law Department's direct and indirect costs, while it excludes the usual and customary expenses incurred in representing our clients in such accounts as contractual services, technical services and litigation. The hourly rate for the current 2009 fiscal year is \$139.00 per hour.

The reason that billable hours are used both with cases handled by this Department and outside counsel is one of accountability and fiscal responsibility. The department being represented is then charged with monitoring their use of attorney's time much like private practice. It has also allowed the Law Department to clearly track the hours attorneys spend on various legal matters. In short, it is a system of checks and balances for legal work of the County.

## Breakdown by Revenue Category



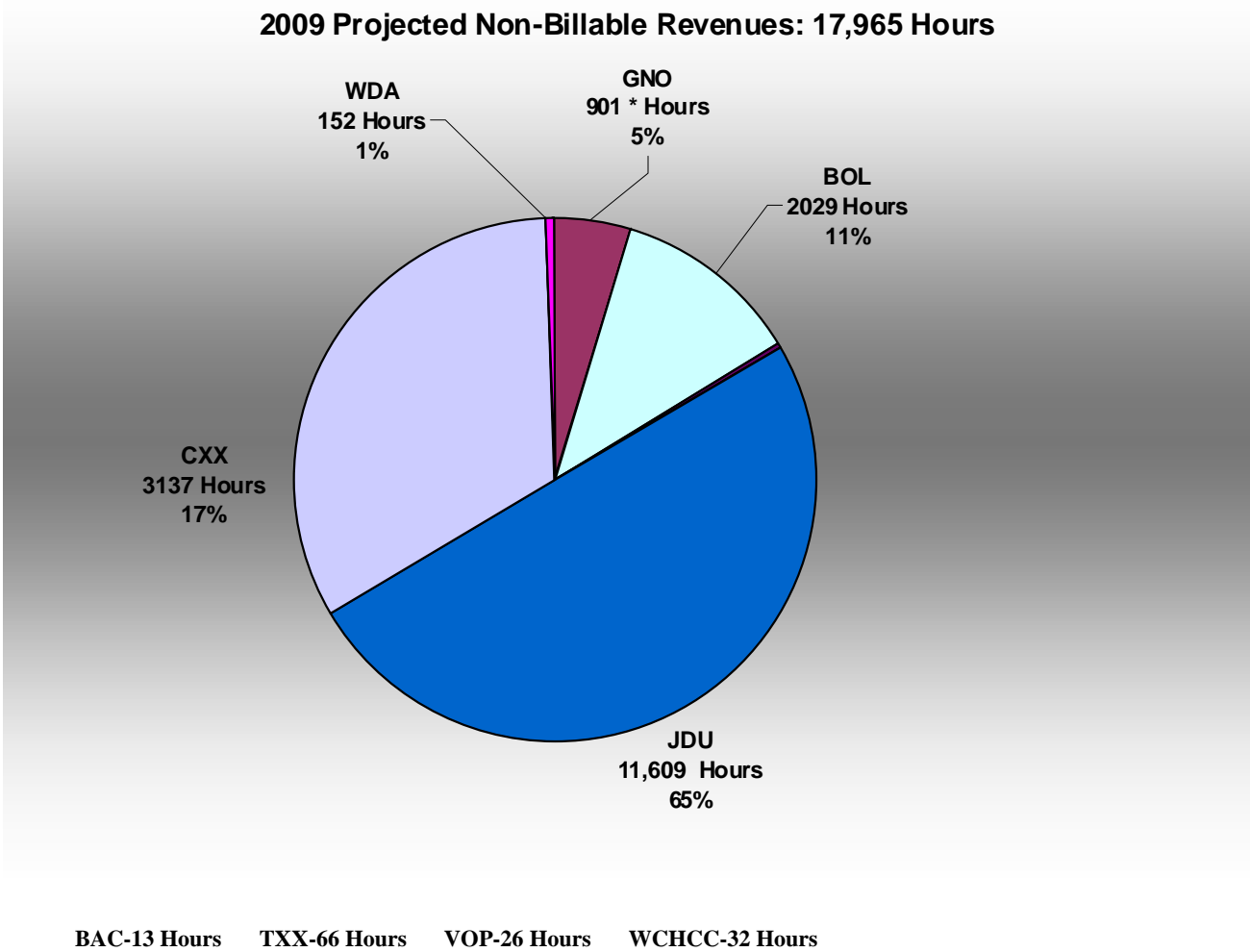
As indicated by the above chart approximately 15% of the Law Department service hours are not billable. This equates to approximately 17,249 hours of client services. This includes services provided to elected officials including the offices of the County Executive, the Board of Legislators and the District Attorney as well as statutorily mandated juvenile delinquency prosecutions. The County Attorney and the Deputies in charge of each bureau do not bill for direct client services or supervision, nor are their hours included in these figures. Notwithstanding the fact that the Deputy County Attorneys do not bill for their time, they are primarily responsible for providing legal advice directly to the Board of Legislators. Specifically, in January of 2008, the Board of Legislators appointed a Litigation Subcommittee which considers all legal matters both before the full Board as well as any other legal matter being handled by the Law Department. The Assistant Chief Deputy County Attorney in charge of the Litigation Bureau must appear before this Subcommittee as well as the County Attorney and Chief Deputy County Attorney at various times. In addition, the Assistant Chief Deputy County Attorney in charge of the Litigation Bureau appears before the Board's Committee on Budget and Appropriations on a regular basis with regard to case settlements, requests to initiate litigation and other various legal matters that require Board of Legislator approval. The Deputy County Attorney in charge of the Contracts and Real Estate Bureau frequently appears before various Board Committees with respect to contractual, affordable housing and energy issues. The Chief Deputy County Attorney attends all of the regular and special Board of Legislator meetings and attends various Board Committee meetings with regard to proposed legislation as well as any other matter where the Board requests legal counsel. It is estimated that the County Attorney, Chief Deputy County Attorney and the Assistant Chief Deputy

County Attorneys make approximately 200 to 250 appearances before the Board of legislators on various issues in a year. Non-billable services also include all attorney time billed directly to the Law Department.

The vast majority of the Law Department’s revenue that is billable comes from Inter-Departmental billing, which comprises 68% of the attorneys’ work time or approximately 78,563 hours for the 2009 fiscal year.

The second largest source of revenue for the Law Department is Departmental billing. Billing to Environmental Facilities, Public Utility Agency, Risk Management, Westchester Community College, and the Division of Solid Waste billing is considered Departmental billing. Each of these Departments contains their own separate funds and therefore their billing is maintained in a separate revenue stream than the Inter- Departmental billing. We estimate that the attorneys will spend approximately 18,384 hours on Departmental matters for the 2009 fiscal year or 16%.

The breakdown of non-billable services is detailed in the chart below:



These figures exclude the approx. 32 days on average that each attorney submits for leave (annual, personal, sick, extended leave, and County Holidays).

\*Please be advised that this number represents only the work performed for the BOL by attorneys required to bill for their time. This number does not include the hours devoted to BOL work handled by the Assistant Chief Deputy County Attorneys, the Chief Deputy County Attorney and the County Attorney who do not bill for their time. Since a good portion of the work for the BOL is carried out by the top management of the Law Department, including the estimated time of the Deputies and County Attorney in the calculation would increase the non-billable hours for the BOL from 11% to approximately 15% of the total number of non-billable revenue.

For the fiscal year that will end December 31, 2009 the Law Department is projecting to provide approximately 96,947 hours of billable client services, yielding over \$13,475,633 from both revenue streams: Inter- Departmental and Departmental. If the number of hours for non-billable services is included, then the number of hours for the year increases to approximately 114,912 hours. We have seen an increase in litigation as a result of our current economic crisis. In difficult economic times, those who are suffering most are the poor and disadvantaged who will look to the County to provide them with needed services. History shows that during economic downturns, Medicaid and Human Services caseloads increase dramatically. While there is a greater demand for government funded services, we are left with diminishing budgets and decreases in state and federal funding to provide those services. Accordingly, the current economic crisis caused an upswing in lawsuits involving the County.

Moreover in 2010, we anticipate performing extensive legal work related to: implementation of the terms of the ADC stipulation including legislation and litigation as appropriate; the continuing implementation of HAVA; negotiating, drafting and monitoring of Consent Orders with the New York State Department of Environmental Conservation regarding Biological Nutrient Removal (BNR), dams and sewer district issues; legal representation to the Department of Social Services based upon a substantial increase in cases involving child protection; and substantial work related to amending County personnel policies with the goal of increasing productivity while reducing expenditures.

In addition the DWI Forfeiture Law, enacted in 2009 and effective in 2010, will significantly impact the Law Department. The Law Department estimates that in order to effectively process approximately 500 forfeiture cases annually under the recently enacted Local Law, the department would require the service equivalent of: one (1) assistant county attorney; one (1) paralegal; and one (1) legal secretary, who would all work exclusively with DWI forfeiture matters. The Budget Department recently prepared a Fiscal Impact Statement in which they indicated that the County would absorb the following annual costs for Law Department salaries, fringe equipment and miscellaneous office supplies in connection with the enforcement of the proposed Local Law:

**2011** - \$254,000

**2012** - \$261,620

**2013** - \$269,470

**2014** - \$285,880

Given the scope and complexity of the requirements of the Local law, it is anticipated that the

Law Department will require a minimum of three (3) months prior to the effective date of the proposed Local Law (December 15, 2010) in order to be completely operational by December 15, 2010 as follows:

- Law Department will need time to educate and coordinate with law enforcement personnel to ensure a mutual understanding of the parameters of the law and the procedures and protocols that will be required to implement the forfeiture law.
- Coordination with the District Attorney's Office to avoid unintended conflicts between the interests of the District Attorney's Office with respect to criminal matters and the interests of the County Attorney's Office with respect to enforcement of the County's forfeiture law.
- Law Department will also need to coordinate with DPS and other police personnel to solidify the procedures, information, notifications and documentation that the police must provide to the Law Department with respect to such cases.
- Law Department will need to inform Chief Administrative Judge Scheinkman of the potential influx of forfeiture cases, who may in turn, establish procedures and or judge assignments and/or parts to handle these civil forfeiture procedures.
- Law Department will also need to establish procedures with local courts in order to quickly obtain the information and documents regarding convictions on cases.
- Law Department will also need to contact the New York State Department of Motor Vehicles to enroll itself in their License Event Notification System for the purposes of receiving an e-mail notification when such driver is convicted in a local criminal court.
- Law Department will need to contact the New York State Department of Motor Vehicles to determine the required procedures to obtain the driver's License Abstract.
- The Assistant County Attorney who will be handling the forfeiture cases will need to familiarize himself/herself with all of the relevant case law and legal procedures pertaining to civil forfeiture proceedings.
- He/She will also be required to create the forms to be utilized in connection with the forfeiture proceedings in order to ready to quickly and efficiently commence such action within the prescribed time frames. Such forms would include a template of: (1) the notices relating to the vehicles that will be subject to our forfeiture law; (2) the legal documents to be filed in the courts; (3) forms and sample documents (such as police reports and certificates of convictions) to be utilized by relevant law enforcement and court personnel throughout the county and which will be required to be submitted to the County Attorney's Office to assist in the enforcement of the County's forfeiture law.

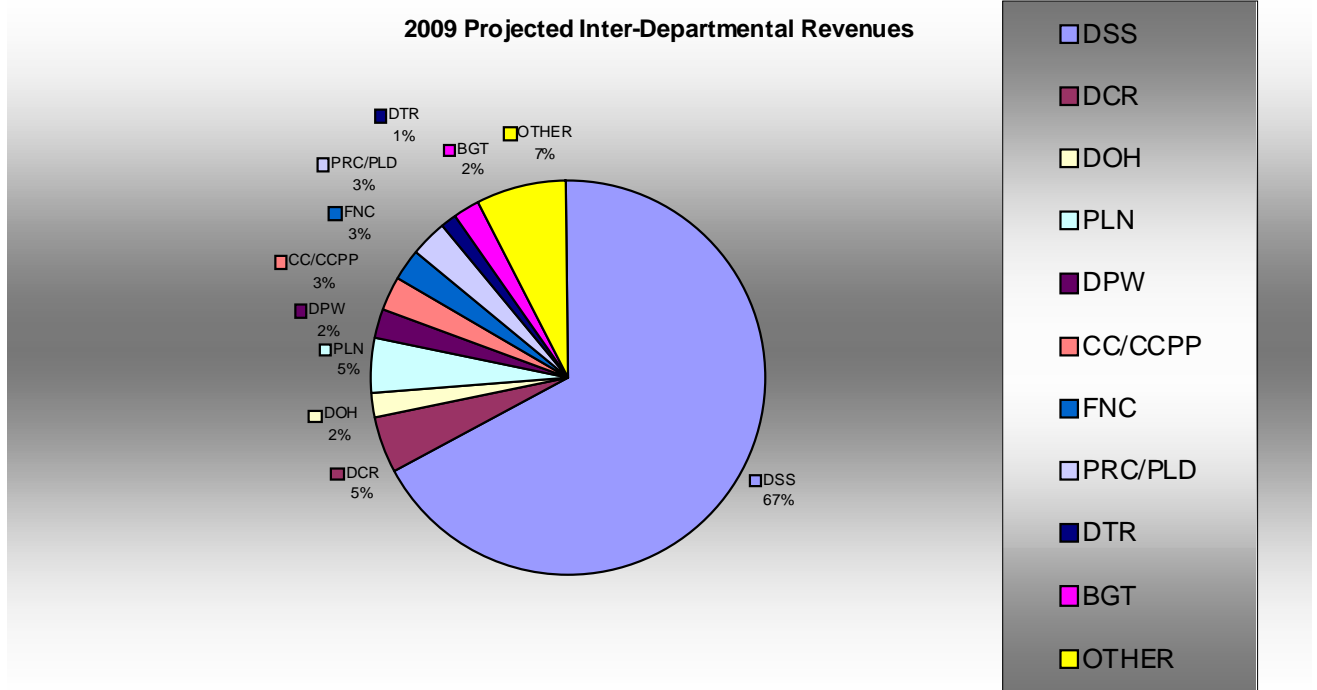
Accordingly, the Law Department will require additional funds not included in 2010 budget, in order to be prepared to implement a DWI forfeiture program on December 15, 2010 as required by law.

Moreover, the change in the federal court system regarding electronic communications and its role in the discovery process also has and will continue to increase hours billed by the Law Department. Discovery in litigation is not limited to paper documents as the courts have expanded discovery to include all electronic communication (e-mails, voice mail, instant and text messaging, text files, word processing documents, electronic spreadsheets and data stored on blackberries and PDAs). We have begun educating Departments involved in federal litigation of the necessity of litigation holds for all documents/emails/voicemails, etc, relating to pending litigation matters. In other words, once litigation is reasonably anticipated, all Departments involved in the litigation must ensure that key players cease deleting their e-mails and relevant documents. The Law Department is obligated to ensure

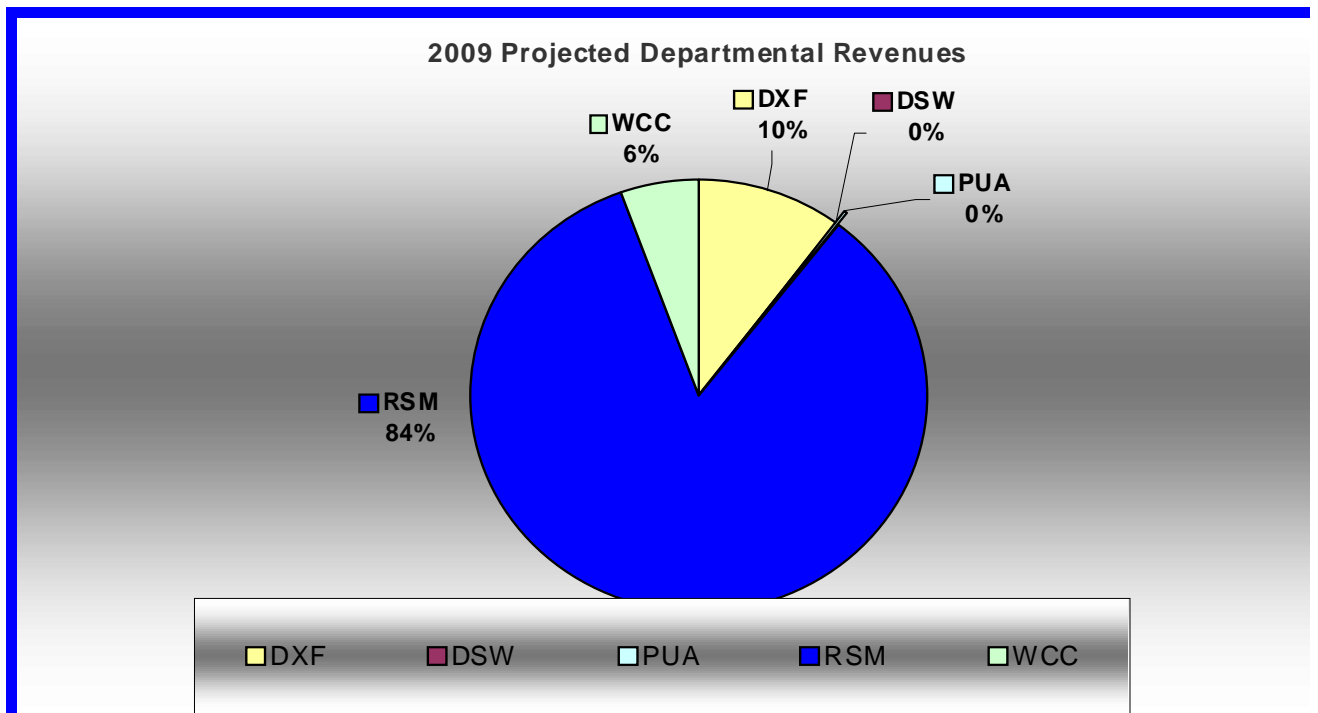
that this happens and to continue to remind the Departments and key players during litigation that their obligation to retain these documents is on-going. In order to ensure that litigation holds are properly established and enforced, the Law Department must work closely with the IT Department to establish specific procedures to be used on an on-going basis when litigation hold notices are sent so that the County is in compliance with applicable law. IT has also been aiding us in compiling and searching the e-mails of “key players” in pending federal litigation so that we can properly respond to discovery demands that the County has received in these cases. These new federal rules require a great deal of work in federal litigation not only to collect the data requested, but to review the data to determine the specific information that needs to be turned over in the discovery process.

The County’s obligations regarding e-discovery in federal and state litigation as well as the impact of electronically stored information on the County’s records retention policies continue to be developing issues for the County. In order to comply with e-discovery, a business plan needs to be developed by IT to address how the County will maintain its current documents in electronic form and ensure that these documents are properly maintained for purposes of litigation and records retention. IT drafted a new Records Retention policy which was approved by the Westchester County Records Commission and distributed to all departments. In addition, in collaboration with DoIT, the Law Department put out a Request for Proposals seeking a consultant to perform a needs assessment and to develop a plan for an Enterprise Electronic Records Management Program and a Legal Discovery Process. After extensively vetting the eight (8) responding consultants, the team ultimately chose JANUS Associates from Stamford, Connecticut. We are currently negotiating with them and hope to have the project started before the end of 2009, which will continue into 2010. The Law Department will be working closely with the consultants to establish a Records Management Program that meets New York State and federal law. Training of appropriate departmental personnel will be required to ensure such policy is implemented and adhered to accordingly.

The projected Inter-Departmental breakdown of revenue for 2009 is charted below.



The projected breakdown of the Departmental revenues for 2009 is shown below:





Risk Management's departmental revenue is derived from reimbursement from the 6-N fund for expenses associated with the investigation and claims management of general, automobile, public officials and medical malpractice liability claims. Staff time is allocable to this function in addition to other indirect costs.

### **Risk Management Quantitative Indicators**

	<b>2008 Actual</b>	<b>2009 Estimated</b>	<b>2010 Projected</b>
Medical Malpractice WMC:	12	15	15
Medical Malpractice *	22	20	20
General Liability	224	229	235
Automobile Liability	40	47	49
Third Party Recoveries	\$271,000	\$275,000	\$275,000
Driver Abstracts Reviewed	3,778	3,800	3,800
Contracts Reviewed	4,128	4,200	4,200
Safety Related Meetings **	160	160	165

\*These are Medical Malpractice claims by inmates against our correctional health services.

\*\* Asbestos Training, Fire Warden Training, Respiratory Protection Training.

Text Box: Note: \*Medical Malpractice WMC are claims that the County is named in and the Office of Risk Management tracks to insure the all contractual obligations are being met under indemnity provisions of the Medical Center agreement.

For 2009 Risk Management has added a new revenue source, which is the collection for the Public Safety police man hours. It is also expected that an increase in overall collections for property damage will be undertaken by risk management on behalf of DPW, DPS, Parks and any other department.

## Highlights of Law Department Accomplishments 2009

### **Appeals, Opinions and Legislation Bureau**

**Name of Accomplishment:** Conducting Freedom of Information Law (“FOIL”) Training for County Employees

**When Initiated:** 2004

**Current Status:** Several presentations conducted each year. Also available upon request of Commissioner/Department Head.

**Description:** This presentation, to be provided by members of the Law Department, contains information, including the most recent updates to the Freedom of Information Law and general guidance to County officers and employees who are designated to be the FOIL officers of their particular County department, in accordance with the New York State Public Officers Law and the Laws of Westchester County. The objective of these seminars is to educate County employees on various FOIL issues and procedures.

**Dollars Saved:** The dollars that have been saved as a result of this ongoing initiative cannot be calculated by a specific dollar figure. Nevertheless, the absence of, or decrease in, the amount of legal opinions and/or lawsuits which may result from errors in responding to requests for release of information certainly results in a cost savings to the County.

**Name of Accomplishment:** Conducting Ethics Training for Westchester County Employees

**When Initiated:** 2008

**Current Status:** Presentation held for County Attorneys and District Attorneys. Also available upon request of Commissioner/Department Head for their departments.

**Description:** This presentation, to be provided by members of the Law Department, contains information regarding the New York State General Municipal Law, the Westchester County Code of Ethics and Executive Orders No. 3-2007 and 1-2008 to provide general ethical guidance to County officers and employees. The objective of this seminar is to educate County employees on various ethical issues and procedures.

**Dollars Saved:** The dollars that have been saved as a result of this ongoing initiative cannot be calculated by a specific dollar figure. Nevertheless, the absence of, or decrease in, the amount of legal opinions and the potential avoidance of unethical conduct by some officers and/or employees would be beneficial to the County.

**Name of Accomplishment:** Deer Management Program

**When Initiated:** 2009

**Current Status:** The Department of Parks, Recreation and Conservation (“Parks Department”) will be starting a recreational deer hunting program at Lasdon Park and Muscoot Farms. There were numerous legal issues and questions that the Parks Department wanted the Law Department to consider, such as First Amendment Issues, liability issues, American with Disability Act issues, labor issues, etc. The Law Department prepared an opinion outlining various legal issues involved with the deer hunting program and advice on how to comply with all local, state and federal laws in implementing such a program.

**Name of Accomplishment: Stream Control Law**

**When Initiated:** 2008

**Current Status:** Not yet introduced

**Description:** This local law would amend Westchester County's Stream Control Law to address the increase in the frequency of flooding in Westchester due, in part, to land development and increases in impervious cover without commensurate stormwater runoff management facilities. This legislation, if adopted would increase the Commissioner of Public Works' authority and jurisdiction by increasing the number of channel lines, expanding the instances where permits would be required before construction could begin that would affect a channel line, require applicants for permits to procure the certification of local officials that the proposed construction complies with all local, county, state and federal laws and regulations and increases the fees for permits.

**Dollars Saved:** The dollars that may be saved as a result of this initiative cannot be calculated by a specific dollar figure. While this legislation could have some home rule implications, the potential reduction or stabilization in the amount of flooding in Westchester County and the damage caused by such flooding would greatly benefit all the residents of Westchester County.

**Name of Accomplishment: Transgender Protection Legislation**

**When Initiated:** 2008

**Current Status:** Passed by the Board of Legislators and approved by the County Executive in April, 2009. The legislation became effective immediately upon enactment. Local Law 4 of 2009.

**Description:** This Office drafted legislation to expand the definition of gender to mirror the definition found in the County's Fair Housing Law. Previously, the County Human Rights Law defines gender to mean "the biological characteristics of being male or female". The County Human Rights Law was amended to further define gender to include "gender identity, self-image, appearance, behavior, or expression, whether or not such gender identity, self image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth".

**Name of Accomplishment: Source of Income**

**When Initiated:** 2008

**Current Status:** In Committee

**Description:** Drafted legislation which amends the Laws of Westchester County in relation to prohibiting housing discrimination based on source of income. This proposed local law, similar to laws passed in many states and localities, would create an additional protected classification in the County's Fair Housing Law and would prohibit discrimination in the sale, rental or lease of housing accommodations based on source of income. Source of income is defined as "lawful, verifiable income derived from social security, or any form of federal, state or local public assistance or housing assistance, grant or loan program, including the federal housing subsidy known as 'Section 8', disability payments, court-ordered payments, gift, inheritance, annuities, pensions, child and spousal support, but shall not include level of income." Further, this local law makes clear that it was not intended to limit the applicability of any Federal, State or local laws, rules, regulations or restrictions on the residency of registered sex offenders. This proposed Local Law would take effect immediately.

**Name of Accomplishment: Legislation Requiring Land Record Filers to Submit a Bar-Coded Cover Sheet**

**When Initiated:** 2008

**Current Status:** Adopted as Local Law 6-2009.

**Description:** This legislation requires any person presenting a document affecting real property for recording and indexing to the Division of Land Records, Office of the County Clerk, to complete and submit a computer-generated bar-coded cover sheet provided by the Office of the County Clerk which summarizes various details of the real estate transaction. The use of the bar-coded cover sheet will eliminate time-consuming data entry by Division of Land Records personnel.

**Name of Accomplishment: Legislation Authorizing Forfeiture of Motor Vehicles Used to Commit Driving While Intoxicated and Drag Racing Offenses**

**When Initiated:** 2008

**Current Status:** Pending

**Description:** This legislation would permit the County Attorney to bring forfeiture proceedings to obtain title to motor vehicles used to commit driving while intoxicated and drag racing offenses. As drafted, the legislation would only allow the commencement of such forfeiture proceedings following a criminal court conviction and would for the most part only permit seizure of such vehicles following a judgment of forfeiture.

**Name of Accomplishment: State Legislation Authorizing the Regulation of Electrical Inspectors in Westchester County**

**When Initiated:** 2007

**Current Status:** Adopted as Chapter 339 of the New York State Laws of 2009.

**Description:** This legislation authorizes Westchester County to establish a board of examiners for electrical inspectors. The board would exercise all licensing authority of electrical inspectors within the County. The law defines the term “electrical inspector” to mean “any person who now or hereafter inspects electrical components, equipment and systems used in buildings and structures to determine the compliance of such electrical components, equipment and systems and the installation of such electrical components, equipment and systems with the applicable provisions of the state uniform fire prevention and building code promulgated pursuant to article eighteen of the executive law; provided, however, that the term electrical inspector shall not include any person who performs such inspections as an employee of the state of New York, any agency of the state of New York, or any county, city, town or village.” Any provisions of law requiring electrical inspectors to also obtain a local license issued by a city, town or village within the County would be superseded.

**Name of Accomplishment: Legislation Creating a Local Conditional Release Commission**

**When Initiated:** 2009

**Current Status:** Pending.

**Description:** Drafted a Local Law to create a Local Conditional Release Commission. The Local Law opts the County in to New York State Corrections Law, allowing local handling of conditional release of inmates. The legislation will serve as a meaningful way of ensuring the safety and welfare of the residents of Westchester County.

**Name of Accomplishment: Waterhouse v. County of Westchester et al.:**

When Initiated: 2007

Current Status: Finalized

Description: This Article 78 proceeding was commenced by James Waterhouse who on November 10, 2007, failed the “sit- up” portion of the mandated Physical Agility Screening Tests for police officers (“Physical Agility Tests”) administered by the County Department of Human Resources (“WCDHR”). In the Article 78 Proceeding, Mr. Waterhouse claimed that the decision by WCDHR to not permit him to retake the physical agility test after he failed the sit-up portion of it was arbitrary and capricious. The Supreme Court (Bellantoni, J.) ruled in favor of Mr. Waterhouse in a “So Ordered” Transcript. The County moved for permission to appeal from the So Ordered Transcript in August, 2008. By Decision and Order dated September 18, 2008, the Appellate Division, Second Department granted the County’s motion for leave to appeal and on September 22, 2009, the Appellate Division reversed Judge Bellantoni’s decision. The Appellate Division held that the County correctly removed Mr. Waterhouse from the civil service list because of his failure to successfully complete the physical agility test.

Dollars Saved: The dollars that have been saved as a result of this initiative cannot be calculated by a specific dollar figure. Nevertheless, the successful conclusion of this matter was beneficial to the County and may either assist in deterring future litigation and/or assist in the successful conclusion of similar future litigation.

**Name of Accomplishment: K-Mart v. Westchester County Department of Weights and Measures – Consumer Protection (“DCP”), et. al.**

When Initiated: 2008

Current Status: Pending

Description: DCP found two of K-Mart’s stores (one in Yorktown and one in White Plains) to be in violation of the County’s Item Pricing Law in 2007. Specifically, K-mart had a total of 1,564 unmarked items, and after a hearing was fined \$1,564,000. K-Mart refused to pay the fine and commenced an Article 78 proceeding against DCP challenging the constitutionality of the County’s Item Pricing Law (“IPL”) law and the excessiveness of the fine imposed. The Supreme Court dismissed K-Mart’s constitutional claim and the matter was transferred to the Appellate Division for a determination on the fine imposed. All briefs have been filed and we await scheduling of oral argument before the Appellate Division.

**Name of Accomplishment: Williams v. Westchester County Board of Elections (“WCBOE”)/ Detres v. WCBOE**

When Initiated: 2009

Current Status: Finalized

Description: On July 20, 2009, the Commissioners of WCBOE invalidated one of the Designating Petitions with respect to the position of Councilperson for the City of Mount Vernon because of an over-designation. The candidates timely filed an Order to Show Cause and a Verified Petition on July 23, 2009 seeking to validate their Designation Petition claiming that their Verified Petition was not an over-designation, and claimed that their mere a failure to delineate the term of office as part of the title of the office for each candidate was curable. The candidates also brought another action in an attempt to invalidate the remaining candidates designating petition for failure to delineate their terms of office as well. By Decision and Order of the Supreme Court, the WCBOE’s determination was upheld as an over-designation is a fatal defect and a violation of New York State Election Law §6-134(3) that cannot be cured and the Supreme Court denied the candidates’ petition to invalidate their opponents’ designating petition. The candidates appealed to the Appellate Division and by Decision dated the Court

upheld the WCBOE's determination. In addition, the Appellate Division also invalidated the opposing candidate's designating petition for failing to designate the term of office being sought. The parties appealed to the New York State Court of Appeals and by Decision dated August 20, 2009, the Court affirmed the determination of the Appellate Division and invalidated all of the designating petitions for the office of councilman for the City of Mount Vernon.

Dollars Saved: The dollars that have been saved as a result of this initiative cannot be calculated by a specific dollar figure. Nevertheless, the successful conclusion of this matter was beneficial to the County insofar as it solidifies the procedures to be followed by the Board of Elections which may assist in deterring future litigation and/or assist in the successful conclusion of similar future litigation.

**Name of Accomplishment: Jacqueline Byrnes v. County of Westchester:**

When Initiated: 2008

Current Status: Pending

Description: By Notice of Petition dated February 26, 2008, Byrnes commenced an Article 78 proceeding against Commissioner of Social Services Kevin P. Mahon and the County of Westchester challenging the Commissioner's determination to terminate her. Byrnes alleged that: (1) Commissioner Mahon was disqualified and should have recused himself from rendering the final determination; (2) Byrne's due process rights was violated by the County's selection of Hearing Officer Ponzini; and (3) the punishment imposed on Byrnes was excessive. By Decision, Order and Judgment dated October 8, 2008, the Supreme Court denied the Article 78 petition and dismissed the proceeding. On October 16, 2008, Byrnes filed a Notice of Appeal. All briefs were filed with the Appellate Division, Second Department and currently awaiting the scheduling of oral argument.

**Name of Accomplishment: Godfrey v. Spano**

When Initiated: 2006

Current Status: Pending

Description: In this action claiming a violation of Section 51 of the New York General Municipal Law and seeking a declaratory and injunctive relief, the plaintiffs, Margaret Godfrey, Rosemarie Jarosz, and Joseph Rossini, asserted that the Executive Order of the Westchester County Executive directing that county agencies recognize same-sex marriage where validly contracted out-of-state was unlawful. The plaintiff served a complaint containing two causes of action: (1) a taxpayer's action; and (2) alleged violation of the New York State Constitution and New York State Municipal Home Rule Law. By Judgment entered April 16, 2007, the Supreme Court, Westchester County (Hon. Joan B. Lefkowitz) granted the motion to dismiss and found that Executive Order No. 3 of 2006 was a valid exercise of the County Executive's power, not an illegal act and does not violate the State Constitution or the Municipal Home Rule Law. The plaintiffs appealed and by Order dated December 30, 2008, the Appellate Division affirmed the decision of the Supreme Court and determined that the "Westchester County Executive Order No. 3 of 2006 is a valid exercise of the County Executive's powers. The plaintiffs were granted leave to appeal to the New York State Court of Appeals and after the filing of briefs, the Court heard oral argument on October 13, 2009. The County is now awaiting a decision on the appeal.

**Name of Accomplishment: Perez v. Westchester County Department of Correction**

When Initiated: 2005

Current Status: Pending

Description: The County appealed an Order of United States District Court for the Southern District of New York wherein the Court held that the plaintiffs, twelve inmates who had alleged that the County violated their constitutional rights based on the County defendants' alleged failure to provide Halal meat in meals served to Muslim inmates and/or Kosher food, were prevailing parties and entitled to attorney's fees. The Court found that the plaintiffs were prevailing parties given that the Court had denied the County defendants' motion to dismiss, held multiple conferences to assist in reaching settlement, participated in an effort to resolve contested issues and reviewed the settlement prior to "so-ordering" it, all of which evidenced judicial imprimatur on the settlement order. Further, the District Court held that the fee cap provided that the federal Prisoner Litigation Reform Act (PLRA) applied and accordingly awarded fees in the amount of \$99,658.48. On August 18, 2008, the County filed a Notice of Appeal from the Judgment. The plaintiffs subsequently filed a cross-appeal. The United States Court of Appeals heard oral argument in the matter on July 10, 2009 and we are awaiting a decision in the matter.

**Name of Accomplishment: Sonnechsen v. Westchester County**

When Initiated: 2004

Current Status: Completed

Description: The plaintiff in this case was injured when the driver of a stolen vehicle that was fleeing from police "jumped" the vehicle onto the sidewalk where the plaintiff was standing and struck him. The plaintiff sued the Town of Eastchester, City of Yonkers, and Westchester County, as well as their respective police departments, on the grounds that the police had acted with reckless disregard for the safety of the public. The police pursuit of the stolen vehicle was initially commenced by the Eastchester Police Department. The Supreme Court granted summary judgment to all three municipal defendants and the plaintiff appealed. The Appellate Division ruled that the County Police did not act with reckless disregard for the safety of others and that the sole cause of the plaintiff's accident was the depraved indifference of the driver of the stolen vehicle.

Dollars Saved: The amount of damages a Court could have awarded had the matter proceeded to trial.

**Name of Accomplishment: Matter of Shammari W.**

When Initiated: 2008

Current Status: Completed

Description: The appellant appealed from a Family Court order adjudging him a juvenile delinquent on the grounds that: he was unlawfully detained without a probable cause hearing when the court ruled that he waived his right to such hearing by not expressly requesting one; the Presentment Agency failed to prove the "physical injury" element of Assault in the second degree; he was denied *Brady* scrutiny; the Family Court erroneously precluded him from presenting a witness; and the Family Court refused to provide him with clinical evaluations at the dispositional hearing. The Appellate Division, Second Department affirmed the Family Court's judgment in all respects. The appellant moved for leave to appeal to the Court of Appeals on the probable cause hearing issue and this Office opposed the motion. The Court of Appeals denied the appellant's motion for leave to appeal.

**Name of Accomplishment: American Independent Paper Mills Supply Co., Inc. v. County of Westchester**

When Initiated: 2003

Current Status: Completed

Description: The Plaintiff-Appellant AIP is a solid waste hauler licensed by the Solid Waste Commission that also operates a waste paper recycling facility in Tarrytown - a facility deemed to be a "Transfer Station" pursuant to the terms of the Westchester County Solid Waste Law. By its complaint, AIP sought a declaration that Section 826-a(306)(2)(b) of the Laws of Westchester County, which imposes a \$20,000 annual fee upon the operators of Transfer Stations, is unconstitutional as an illegal tax. The County's position was that the Transfer Station fee was reasonably related to the cost of enforcing the provisions of the Solid Waste Law and that the fee was therefore constitutional. By stipulation, the parties agreed to have the Supreme Court decide the matter based upon its review of the depositions conducted during the course of discovery. By Judgment, entered January 28, 2008, the Supreme Court, Westchester County (Liebowitz, J.S.C.), dismissed AIP's complaint. AIP appealed and by Decision and Order, entered on September 22, 2009, the Appellate Division modified the judgment by deleting the provision dismissing the complaint and replaced it with a provision declaring that AIP had not established that the transfer station fee was unconstitutional and affirmed the judgment as modified.

**Name of Accomplishment: Moxey v. County of Westchester**

When Initiated: 2004

Current Status: Completed

Description: This was the County's appeal from an Order of the Supreme Court, Westchester County, entered May 8, 2008, that denied its motion for summary judgment in this personal injury action arising out of a one-car automobile accident on the Bronx River Parkway. There was heavy rainfall on the accident date and the Plaintiff alleged that she lost control of her car after running over a large tree limb which obstructed the roadway due to the purported negligence of the County. In support of its motion for summary judgment the County produced the affidavits of the Clerk of the Board of Legislators and Commissioner of Public Works demonstrating a lack of prior written notice of the defect as well as the deposition testimony of the DPW worker leading the crews checking for roadway hazards on the incident date to demonstrate a lack of constructive notice. The Supreme Court denied the County's motion and this appeal was commenced by Notice dated May 15, 2008. By Decision and Order, entered June 30, 2009, the Second Department reversed the Order of the Supreme Court and granted the County's motion for summary judgment dismissing the complaint.

**Name of Accomplishment: Martin Banks v. County of Westchester**

When Initiated: 2008

Current Status: Completed.

Description: The plaintiff in this case, an inmate in the custody of the Department of Corrections, was injured playing handball at the facility, when he slipped on a soap line placed on the handball court by another inmate. He brought suit against the County seeking damages. The Supreme Court granted summary judgment in favor of the County, determining that the plaintiff had assumed the risk of injury by playing on the handball court when he was aware of its conditions. By unanimous decision dated June 29, 2009, the Appellate Division, affirmed the decision of the Supreme Court.

**Name of Accomplishment: Matter of Justin R.**

When Initiated: 2008

Current Status: Completed.

Description: The Appellant appealed an order of the Family Court which ordered the



administration of psychotropic medications to the subject child over the objections of the parents to stabilize the child's aggression and mood swings, and to allow him to transition to foster care. The father claimed that the Court erred in (1) ordering the administration of Respiradol over the objections of the parents; (2) ordering the administration of Respiradol for a purpose not approved by the Federal Food and Drug Administration; and (3) that ordering the administration of Respiradol was not supported by sufficient evidence and that the Family Court applied the wrong legal standard. By Decision and Order dated June 30, 2009, the Appellate Division unanimously affirmed the order of the Family Court, holding that the County met its burden of proof and that the administration of Respiradol was narrowly tailored to meet the child's best interests.

## **Contracts Bureau**

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**Name of Accomplishment: Legacy Projects**

When Initiated: 2009

Current Status: Ongoing

Description: Providing legal advice in connection with the Legacy Program whereby local municipalities operate and maintain new ball fields to be constructed by the County: City Park rehabilitation in New Rochelle and Columbus Park rehabilitation in Port Chester. Responsible for drafting the necessary Intermunicipal Agreements and legislation to implement these projects.

**Name of Accomplishment: Hudson RiverWalk**

When Initiated: 2006

Current Status: Ongoing

Description: Provided ongoing legal advice and counsel, research and drafting services, in connection with the acquisition of property rights to permit the County's construction of a section of the RiverWalk Trailway along the Hudson River.

**Name of Accomplishment: Preservation of Hemlock Hills Farmstead.**

When Initiated: 2007

Current Status: Ongoing

Description: Providing legal advice in connection with the preservation of approximately 118 acres of farmland located within the Towns of Yorktown and Cortlandt to acquire a conservation easement to preserve the property as agricultural lands in perpetuity. The acquisition of this conservation easement, not yet closed, shall be made pursuant to an agreement with the State of New York under the New York State Farmland Implementation Grant Program.

**Name of Accomplishment: Hilltop Hanover Farm**

When Initiated: 2009

Current Status: Ongoing

Description: Provided legal advice and counsel, research and drafting services, including drafting of necessary A&C resolutions and agreements to permit various organizations to utilize space at the farm in order to establish public environmental education programs. Provided advice on issues related to Winery license and the RFP process for a new farm-related operation.

**Name of Accomplishment: Copland House License at Merestead**

When Initiated: 2009

Current Status: Ongoing

Description: Providing legal advice and counsel, research and drafting services, including drafting of necessary agreement and related resolution to allow Copland House to conduct an artist-in-residence program and provide public performances at Merestead.

**Name of Accomplishment: Quarry Heights**

When Initiated: 1990s

Current Status: Ongoing

Description: Providing legal assistance in connection with the County's initiative, with the cooperation of the Town of North Castle and the Town/Village of Harrison, to undertake the construction of sewer lines and appurtenances necessary to provide public sanitary sewer service to the Quarry Heights area located in the Town of North Castle, including all the necessary legislation and IMAs with North Castle and Harrison and property interest documents.

**Name of Accomplishment: Gunshot Detection System**

When Initiated: 2009

Current Status: Complete

Description: Provided legal advice and counsel, research and drafting services, including drafting of necessary legislation, A&C resolutions and agreements to facilitate the installation of a gunshot detection system in both the City of Mount Vernon and the City of Rye. The system utilizes acoustic sensors to detect and locate the gunshot incident.

**Name of Accomplishment: American Recovery and Reinvestment Act of 2009**

**Compliance**

When Initiated: 2009

Current Status: Ongoing

Description: Providing legal advice, legal research, and drafted agreements to a number of County departments regarding compliance with the requirements attached to funding they receive under the American Recovery and Reinvestment Act of 2009 ("ARRA"). These ARRA requirements have been promulgated not only by the federal government, but also by the various New York State agencies that have received ARRA funding and are, in turn, passing that funding on to the County. Accordingly, these ARRA requirements are very particular and somewhat nuanced, and must be carefully considered on a case-by-case basis. For example, Law worked with DPW on the two bids for the equipment necessary for the Mamaroneck and New Rochelle Treatment plants for the BNR Order on Consent to modify the standard Bureau of Purchase and Supply bid for both ARRA compliance and other purposes. As more ARRA-funded projects proceed to contract, the Bureau has seen a steady up-tick in the number of ARRA contracts, and the amount of ARRA-related assistance, needed by the County's departments. This contract-level work is in addition to the Bureau's regular, continuing participation, with the County Attorney, in the County Executive's ARRA Compliance Task Force.

**Name of Accomplishment: Refuse Disposal District No. 1 – Solid Waste Disposal Agreement and Service Agreement; Related Intermunicipal Agreements**

When Initiated: 2006/2008

Current Status: Complete

Description: Providing legal advice, legal research and drafting services for the County, acting by and through the District, to send out Requests for Proposals to select a vendor or vendors for solid waste disposal services that will be necessary when the Solid Waste Disposal Agreement with Wheelabrator (Resco) expires on October 21, 2009. Participated in negotiations with sole proposer regarding new contract. Drafted legislation and prepared agreements whereby the District will provide solid waste disposal services for the municipalities that are members of the District.

**Name of Accomplishment: Affordable Housing**

When Initiated: 1990s

Current Status: Ongoing

Description: Providing legal advice, drafting negotiation services and legislation in connection with the following projects:

Fox Island Affordable Housing Project in the Village of Port Chester;  
Assistance with NYS Affordable Housing Corp. grant applications and contracts;  
Assisting the Planning Department in addressing certain affordable housing issues in various municipalities;  
Fellowship Hall, Town of Bedford;  
L&M Equities project at 330 Riverdale Avenue in Yonkers;  
Proposed affordable housing project at 37 Wildwood Avenue;  
Academy Place Affordable Housing located at the northeast corner of Academy Place and State Street in the Village of Ossining;  
Round Top, Route 9A;  
Tarrytown Road, Town of Greenburgh;  
Supportive Housing Grants (for DSS), including new homes for Vets, permanent transitional rental housing for homeless persons with disabilities who have served in the armed forces located at 157 Bruce Avenue, Yonkers;  
Fairview Manhattan Park Apartments Affordable Housing (HIF to construct infrastructure improvements) located at 90 and 100 Manhattan Avenue and 33 Oak Street in the Town of Greenburgh;  
55 Pleasant Avenue – affordable housing in Pleasantville;  
Grant Parks Affordable Housing (HIF to construct infrastructure improvements) in the City of Yonkers;  
60 West First Street rental housing located in the City of Mount Vernon

**Name of Accomplishment: Fair and Affordable Housing Settlement**

When Initiated: 2009

Current Status: Complete

Description: Provided legal advice and counsel, research and drafting services, regarding legislation to authorize a settlement in the litigation entitled United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York. Among other things, the settlement requires the County to expend approximately Sixty-Two Million Five Hundred Thousand (\$62,500,000) Dollars in order to “affirmatively further fair housing”.

**Name of Accomplishment: BNR – Biological Nutrient Removal**

When Initiated: 2008

Current Status: Ongoing

Description: Assisted the County Executive’s Office and Department of Environmental Facilities with Legislation to approve execution of a revised Order on Consent with the New York State Department of Environmental Conservation in order to alter the County’s obligations under the existing Consent Order. Prepared Bonding legislation to fund the County’s obligations thereunder, including:

SLI01 - Long Island Sound BNR Remediation approving a Bond Act, in the total amount of \$234,700,000;

SLI02 - Environmental Benefit Projects approving a Bond Act, in the total amount of \$780,000 to fund the costs of certain environmental:

SLI03 - Long Island Sound BNR Water Quality Improvement Project to add an appropriation of

\$1,920,000, including grant funds, as well as a bond act in the amount of \$450,000; and SNR06 - New Rochelle WWTP Composite Performance Implementation/Plant Expansion approving a Bond Act, in the total amount of \$173,000,000

**Name of Accomplishment: County Water District Agreement with NYCDEP**

When Initiated: 2007

Current Status: Ongoing

Description: Assist the Department of Environmental Facilities in negotiating with the New York City Department of Environmental Protection ("DEP") to ensure a supply of post UV treated water to County Water Districts. Currently working to finalize agreements with the following entities for a connection to DEP's yet to be constructed UV disinfection facility at Eastview –

District No. 3;  
Village of Briarcliff Manor  
Village of Tarrytown  
Village of Sleepy Hollow  
Westchester Joint Water Works;  
Village of Mamaroneck;  
Town of Mamaroneck; and  
Town/Village of Harrison.

**Name of Accomplishment: County Water District Miscellaneous Projects**

When Initiated: 2007

Current Status: Ongoing

Description: Assist the Department of Environmental Facilities in preparing legislation to authorize the Gate of Heaven Water District No. 3 project to obtain water from a Mount Pleasant Connection during a pending shutdown of the Catskill Aqueduct;  
Prepare permit agreement for the proposed drift tunnel under the penitentiary; and  
Prepare permit agreement for work to be done on DEP's out-fall pipe located at the Kensico Dam.

**Name of Accomplishment: Westlake Sewer Improvements**

When Initiated: 2009

Current Status: Ongoing

Description: Provided assistance to DXF to draft an agreement (and related legislation) whereby the County would receive a grant from DEP to construct certain sewer improvements.

**Name of Accomplishment: Watershed / East of Hudson**

When Initiated: 2007

Current Status: Ongoing

Description: Assist the Department of Environmental Facilities by conducting a review of potential County liabilities in connection with potential disbursement of East of Hudson funds for proposed municipal water quality projects. Developed a draft IMA to reduce County exposure to risk; and provided legal assistance in connection with the County's provision of East of Hudson ("EOH") Grant Funds to various municipalities for certain approved water shed projects, including preparation of legislation and agreements. Pending agreements as follows

Loan to the Town of Somers. Legislation and proposed IMA have been drafted and are being revised in per Planning;  
Amendment of Somers Local Share IMA, which was distributed for execution;  
EOH funds to the Town of Yorktown – IMA was distributed for execution; and  
EOH funds to the Town of Bedford – IMA was distributed for execution;

**Name of Accomplishment: Department of Health Well Testing Agreement**

When Initiated: 2009

Current Status: Ongoing

Description: Assisted the Department of Health in review of an Agreement with NYS for testing wells. Advised as to potential liability.

**Name of Accomplishment: Revisions to Wick's Law**

When Initiated: 2008

Current Status: Ongoing

Description: Provided legal advice and counsel to DPW staff in connection with the implementation of the changes in Wick's Law.

**Name of Accomplishment: Revisions to DPW Bid Books**

When Initiated: 2009

Current Status: Ongoing

Description: Provided legal advice and counsel to DPW staff in connection with revisions and updates to the County's bid books to comply with all new laws and regulations including the changes in Wick's Law and compliance with new and updated Local Laws, County Executive Orders, State statutes and Federal statutes and guidelines including the American Recovery and Reinvestment Act of 2009 ("ARRA").

**Name of Accomplishment: Gateway Building.**

When Initiated: 2007

Current Status: Ongoing

Description: Provided legal advice and counsel to WCC in connection with the ongoing construction of the County's first LEEDs certified building.

**Name of Accomplishment: Liens Filed on County Construction Projects**

When Initiated: N/A

Current Status: Ongoing

Description: Provided legal advice and counsel to DPW in regards with public liens filed by contractors in connection with County construction projects.

**Name of Accomplishment: RFP for Paratransit Services.**

When Initiated: 2009

Current Status: Ongoing

Description: Provided legal advice and prepared RFP documents for the Office for the Disabled in connection with the procurement of Para transit services for Westchester County to commence in 2010.

**Name of Accomplishment: Assist Department of Transportation in renewing Agreements with Liberty Lines**

When Initiated: August 2008

Current Status: Completed

Description: Provided assistance to the Department of Transportation in drafting new Operating Agreement and various license and lease agreements between the County and Liberty Lines Transit, Inc., which expired in December 2008. Law prepared and submitted appropriate resolutions to the Board of Acquisition and Contract to enter into these new agreements.

**Name of Accomplishment: Assistance and Implementation of Electronic Fund Transfer Program (“Vendor Direct”)**

When Initiated: 2008

Current Status: Completed

Description: Provided assistance to the Department of Finance, which included preparing a legal opinion affirmatively advising that the County could require all vendors to accept payment via EFT and eliminate the use of checks, with the option of a waiver for hardships. Law worked with Finance to create a letter to the vendors, a “Frequently Asked Questions” list, an enrollment form and a waiver hardship form. Law worked with Finance and other departments to implement Vendor Direct Program language and provide notice in all contracts, bids, etc.

**Name of Accomplishment: Disposal of County real property no longer needed for County purposes.**

When Initiated: 2004

Current Status: Ongoing

Description: Prepared contracts of sale and closing documents for the sale of surplus and residual County parcels that are no longer needed for County purposes as authorized by the Board of Legislators. Currently working toward closing on the various parcels approved for sale and preparing new legislation for the sale of additional properties to be deemed surplus by the Board of Legislators.

**Name of Accomplishment: Marx Realty Lease for space occupied by WCC at Cross County Shopping Center.**

When Initiated: 2007

Current Status: Ongoing

Description: Prepared legislation and providing legal advice to WCC in connection with the negotiations for new leased space at the Cross County Shopping Center due to landlord’s requested termination of WCC’s current lease.

**Name of Accomplishment: Miscellaneous Westchester County Health Care Corporation Matters**

When Initiated: 1998

Current Status: Ongoing

Description: Provide legal advice and counsel, research and drafting services, including drafting of necessary legislation, Board of Acquisition and Contract (“A&C”) resolutions and agreements to various County Departments in connection with:

Legal issues related to the fiscal issues of WCHCC  
County’s Credit Support for Working Capital Program  
Inmate Health Care for the Department of Correction

Third Party Ambulance Services for the Department of Social Services  
Rabies Vaccinations for the Department of Health  
Blood borne Pathogens post exposure evaluations for the Department of Health  
Medical case management and oral health care for Westchester/Rockland/Putnam County residents with HIV/AIDS for the Department of Health

**Name of Accomplishment: Shelter Supply Agreements**

When Initiated: 2009

Current Status: Ongoing

Description: Provided legal advice, legal research, drafted legislation, resolution and agreements for the County to enter into Agreements with various municipalities in order to pre-position shelter supplies and equipment throughout Westchester County to prepare for the potential need to shelter residents during a disaster or emergency requiring people to leave their homes to seek temporary shelter.

**Name of Accomplishment: White Plains Hazmat Truck and Foam Trailer**

When Initiated: 2009

Current Status: Completed

Description: Provided legal advice, legal research, drafted legislation, resolution and agreements for the County to enter into to enter into two intermunicipal agreements with the City of White Plains; the first for a lease to the City of a HAZMAT truck for use by the City in connection with its Fire Department, Hazardous Materials and Weapons of Mass Destruction Response operations; and the second for a license to the City to transport and operate the foam trailer in response to mutual aid requests pursuant to the Westchester County Fire Mutual Aid Plan when deemed necessary by the Commissioner of Emergency Services.

**Name of Accomplishment: Emergency Shelter Training Agreement**

When Initiated: 2009

Current Status: Ongoing

Description: Providing legal advice, legal research, drafting resolution and agreement for the County to enter into an agreement with the City of New York, through its New York City Office of Emergency Management for emergency shelter training.

**Name of Accomplishment: MTA Bus transaction**

When Initiated: 2009

Current Status: Ongoing

Description: Providing legal advice, legal research and drafted legislation for the County to sell to the MTA Bus Company, a corporate subsidiary of the Metropolitan Transportation Authority, a New York State public benefit corporation, ("MTA") up to eighty-four (84) transit buses acquired by the County in 1995 and 1996.

**Name of Accomplishment: Supplementation Services to update the Laws of Westchester County**

When Initiated: N/A

Current Status: Ongoing

Description: Provided research and drafting services, including drafting of necessary legislation, A&C resolutions and agreements in relation to supplementation services to update the Laws of Westchester County.



**Name of Accomplishment: CDBG Program**

When Initiated: N/A

Current Status: Ongoing

Description: Provided legal advice and counsel to the Department of Planning in regards with drafting the contracts to be used in connection with the CDBG Program.

**Name of Accomplishment: Agreements with NYPA**

When Initiated: 2009

Current Status: Ongoing

Description: Provided legal advice and counsel to DPW in connection with various ongoing energy savings projects such as the window replacement project at MOB and 112 East Post Road, including drafting of necessary legislation, agreements and A&C resolutions.

**Name of Accomplishment: JP Morgan Chase Hangar Lease**

When Initiated: 2008

Current Status: Completed

Description: Provided legal advice and counsel, research and drafting services, including drafting of necessary agreement and authorizing legislation for a long term lease of a hangar at Westchester County Airport. This agreement will result in higher rental revenue and approximately \$18 million in tenant improvements to the hangar.

**Name of Accomplishment: Bond Counsel RFP**

When Initiated: September 2009

Current Status: Ongoing

Description: Prepared and advertised a request for proposals for bond counsel services for issuance of its general obligation bonds as contracts with bond counsel expire in January 2010.

**Name of Accomplishment: County Bonds**

When Initiated: N/A

Current Status: Ongoing

Description: Providing legal advice and drafting services to the Budget Department in connection with the preparation of an estimated one hundred (100) plus Bond Acts by year end, including associated legislation, to finance various County capital projects to and provide legal services for the General Obligations sale.

**Name of Accomplishment: Other Financings**

When Initiated: N/A

Current Status: Ongoing

Description: Provide continuing legal counsel to the Department of Finance in various financing arrangements, including private placement of Bond Anticipation Notes, the sale of County bonds to the New York State Environmental Facilities Corporation.

**Name of Accomplishment: Sewer District Modifications**

When Initiated: 2009

Current Status: Ongoing

Description: Worked with the Department of Environmental Facilities to prepare necessary

legislation to authorize the modification of various sewer districts throughout the County.

**Name of Accomplishment: 6N Contracts**

When Initiated: 2009

Current Status: Ongoing

Description: Drafted retainer agreements and A&C Resolutions in connection with the renewal of various contracts with outside law firms to represent the County under its self-insurance program.

**Name of Accomplishment: Westchester 2025 3D Visioning Website**

When Initiated: 2009

Current Status: In development

Description: Assisted Planning Department in developing an RFP to procure a consultant to design and implement a website utilizing 3-D visioning tools to establish an easily navigable portal to view and participate in Westchester 2025.

**Name of Accomplishment: Transfer of Property to the NYS Thruway Authority Austin Avenue Yonkers**

When Initiated: 2007 (1985)

Current Status: Ongoing

Description: Prepared legislation to authorize sale to the NYS Thruway Authority of a parcel of County owned property along the Thruway, which was passed by the BOL on October 22, 2007. NYS must still perform some work on the site after which the County will file a Declaration.

**Name of Accomplishment: Local Government Efficiency Grant**

When Initiated: 2009

Current Status: Ongoing

Description: Assisted the administration with preparing legislation to authorize the Department of Health to submit a grant application for funds for a septic system database that the County is creating.

**Name of Accomplishment: Yonkers Tax Increment Financing**

When Initiated: 2008

Current Status: Ongoing

Description: Providing legal advice, legal research and drafting services for the County regarding a proposed Tax Increment Financing ("TIF") project in downtown Yonkers. Proposed project includes housing and commercial space. County is being asked to pledge a portion of the incremental property tax generated by the development of the properties within the TIF district.

**Name of Accomplishment: Emergency Radio System**

When Initiated: 2003

Current Status: Ongoing

Description: Provided legal advice and counsel, research and drafting services, including drafting of necessary legislation, A&C resolutions and agreements to facilitate the maintenance of a county-wide emergency radio system. Ongoing tasks include drafting of additional agreements, including agreements for the distribution of the radio equipment to municipalities and an ongoing maintenance agreement. Provided legal services in connection with the acquisition of replacement radio frequencies in order to enhance system performance.

**Name of Accomplishment: Legislation Allowing Other Municipalities to Utilize County Contracts**

When Initiated: 2009

Current Status: Complete

Description: Provided legal advice and counsel, research and drafting services, including drafting of necessary legislation authorizing political subdivisions of the State of New York, fire companies and districts to make purchases or contract for services through contracts which are awarded by the County of Westchester

**Name of Accomplishment: Playland Trademarks**

When Initiated: 2009

Current Status: Ongoing

Description: Register Playland green dragon logo, the Playland name and design as well as “Have Some Fun Today” with the United States Patent and Trademark Office through outside counsel. Assist Playland in entering into consent agreements with organizations having similar names or businesses in order to complete filing of Playland’s Marks. Registration of the Playland Green Dragon service mark was completed and filed on June 30, 2009 and registration of the “Have Some Fun Today!” service mark and design were completed on June 23, 2009.

**Name of Accomplishment: Secure and Non-secure Detention**

When Initiated: 2009

Current Status: Ongoing

Description: Assist Departments of Social Services and Probation in transferring Non-secure Detention , Secure Detention and related agreements from DSS to Probation. Draft letter to providers regarding protocols for transfer which is to take effect January 1, 2010.

**Name of Accomplishment: Alternative Non-secure Detention**

When Initiated: 2007

Current Status: Ongoing

Description: Draft Legislation, Board of Acquisition and Contract resolutions and negotiate and draft Agreements with providers of non-secure detention for use by the County when its’ primary non-secure detention provider (Leake & Watts) has reached full capacity.

**Name of Accomplishment: Prisoner Transportation**

When Initiated: pre-1997

Current Status: Ongoing

Description: Prepare legislation and intermunicipal agreements with various Westchester County Municipalities to provide transportation of prisoners remanded to the Westchester County Jail to and from appearances in court.

**Name of Accomplishment: Contracts for Board of Legislators.**

When Initiated: N/A

Current Status: Ongoing

Description: Assist Board staff with contracts and contract related questions. Prepare numerous contracts for the Board and related A&C resolutions. From the period of January 1, 2009 to October 28, 2009 the Law Department has assisted the Board with 50 such matters.

**Name of Accomplishment: Contracts for Office of the County Executive**

**When Initiated:** N/A

**Current Status:** Ongoing

**Description:** Assist County Executive staff with contracts and contract related questions. Prepare numerous contracts for the Board and related A&C resolutions.

**Name of Accomplishment: Westchester County Deferred Compensation Board**

**When Initiated:** 1984

**Current Status:** Ongoing

**Description:** Provide legal counsel services to the Westchester County Deferred Compensation Board, including providing legal advice and performing required filings with the State of New York.

**Name of Accomplishment: Solid Waste Commission Matters**

**When Initiated:** 2004

**Current Status:** Ongoing

**Description:** Provide continuing legal counsel to the Commission with respect to the implementation of the Westchester Solid Waste Licensing Law regarding implementation of the law, and its application to local trades and businesses. Providing additional on-going assistance to the Commission, including legal research and opinions, attendance at all Commission meetings, as well as drafting services, such as assisting with the preparation of proposed legislation and preparation of contracts.

**Name of Accomplishment: Consumer Protection – Petroleum Bulk Storage**

**When Initiated:** 2009

**Current Status:** Ongoing

**Description:** Assisted the Consumer Protection Bureau in review of an Agreement with NYS petroleum bulk storage.

## **Litigation Bureau**

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**Name of Accomplishment: Office of Professional Responsibility**

**When Initiated:** 2004

**Current Status:** Fully operational, 17 matters investigated in 2008 and 12 have been investigated so far in 2009.

**Description:** In 2004, the Department of Public Safety created the Office of Professional

Responsibility (“OPR”). This office was created to enhance the ability of the County to conduct investigations into alleged wrongdoing by County employees of either a criminal or administrative nature and to ensure coordination between the Department of Public Safety and the County Attorney’s office.

**Name of Accomplishment: Employee Disciplinary Proceedings**

When Initiated: Ongoing

Current Status: Approximately 80 cases were referred to the Law Department in 2008.

Description: Departments will refer a disciplinary matter over to the Law Department. The attorney assigned will evaluate the facts provided by the Department to determine if a formal hearing is warranted. Depending upon the nature or severity or frequency of the misconduct or incompetence alleged, informal discipline may be the more appropriate response. If formal disciplinary charges are drafted, the attorney assigned to the matter will investigate the allegations, prepare charges, prepare witnesses to testify at the hearing, gather documents, designate a hearing officer and present the case on behalf of the Department. In the case of a Section 75 disciplinary matter, after a hearing, the hearing officer makes a recommendation to the Commissioner, who then can adopt the recommendation or deviate from it and impose a different penalty. In the case of a binding arbitration, the arbitrator imposes the penalty, which is final and binding.

**Federal Court Cases:**

Marty Calderon v. Commissioner of Social Services, David Hansell, In Individual and Official Capacity, Philip Nostramo, In Individual & Official Capacity, and Ralph Arce, In Individual and Official Capacity,

When Initiated: 2008

Current Status: This case was withdrawn, dismissed without prejudice and closed by the Court by Order dated August 14, 2009.

Dollars Saved: It is difficult to estimate the dollars saved by the withdrawal of this case. However, if Plaintiff prevailed on her claims at trial, a jury could have awarded compensatory and punitive damages in excess of 100,000.00.

Description: In this federal action, Plaintiff, Marty Calderon, a law school graduate, claimed that she was denied public assistance benefits on the basis of her race, gender, age and disability and that her Equal Protection rights were violated because Defendants “award food stamp (sp), medical, and housing benefits to applicants who have much greater income that the Plaintiff”.

CT Realty Holdings and Management, Inc. v. Martin Rogowsky, individually, Lois Bronz, individually, William Burton, individually, Peter Harckham, individually, Ken Jenkins, individually, Michael Kaplowitz, individually, Judith Meyers, individually, Vito Pinto, individually, Bernice Spreckman, individually and William Ryan, individually:

When Initiated: 2008

Current Status: The case has been discontinued.

Dollars Saved: If this case had gone to trial before a jury, and the verdict was in favor of plaintiff, it is difficult to estimate the amount of the verdict as jury verdicts in civil rights cases can run from \$15,000 to well over \$100,000.00.

Description: This case was a taxpayer action commenced in federal court where plaintiff corporation alleged that the County violated state laws by purchasing a building located at 450

Saw Mill River Road in the absence of a mandatory referendum. The Connecticut corporation was created by Sam Zherka at the same time that the lawsuit was commenced and County Defendant moved to dismiss, alleging that Plaintiff created the out of state corporation for the sole purpose of creating federal court diversity jurisdiction. After County Defendants filed the motion, on or about February 27, 2009, Plaintiff filed a Notice of Dismissal in federal court without prejudice. Plaintiff may refile in State Court which is the appropriate jurisdiction.

**Catherine Martino v. Westchester County, Department of Corrections**

**When Initiated:** 2006

**Current Status:** The case has been dismissed.

**Dollars Saved:** It is difficult to estimate the dollars saved by this dismissal.

**Description:** Plaintiff, a former inmate, filed a federal complaint pursuant to 42 U.S.C. Section 1983 alleging that she was deprived of medical treatment for an alleged stomach condition and as a result suffered from mental and emotional stress. On January 15, 2008, the Court granted the County's motion to dismiss and issued an order dismissing all claims against the named and served defendants. On September 29, 2009, the Court issued an Order dismissing the complaint against the remaining John and Jane Does for failure to prosecute.

**Comments:**

**Old St. George, et al v. Bianco, et al.**

**When Initiated:** 2008

**Current Status:** The case has been dismissed and is currently on appeal in the Second Circuit.

**Dollars Saved:** If this case had gone to trial before a jury, and the verdict was in favor of plaintiff, it is difficult to estimate the amount of the verdict as jury verdicts in civil rights cases can run from \$15,000 to well over \$100,000.00.

**Description:** This is a federal civil rights action, filed in the Southern District of New York pursuant to 42 U.S.C. Sections 1983, 1985 and 1988, alleging violation of Plaintiffs' rights to petition the government for the redress of grievances under the first amendment to the US Constitution, and violation of Plaintiffs' rights to due process as guaranteed under the fifth and fourteenth amendments to the US Constitution. The action concerns efforts by the Plaintiffs to operate a vineyard and winery upon two parcels of property, one owned by Plaintiffs, and one by the County of Westchester. Plaintiff has a license agreement pursuant to which he grows grapes for purposes of producing wine at the County's Hilltop Hanover Farm. Plaintiff DeChiaro has also purchased property in the Town of Yorktown, and intends to convert an old church to a winery. The Amended Complaint alleges that Legislator George Oros was politically influenced by Yorktown Board member Nicholas Bianco and entered into a conspiracy pursuant to which Mr. Oros opposed Plaintiffs' application to add his winery at Old St. George Church to the County's Agricultural District, and that Mr. Oros exerted political influence over Westchester County employees to dissuade them from approving, or indicating their approval, of Plaintiffs' project. It also alleges identical claims against the County of Westchester, for violation of Plaintiffs' constitutional rights, and a separate claim against the County for breach of covenant of good faith in connection with its license agreement with Plaintiffs. By Decision and Order dated May 8, 2009, Magistrate Lisa Margaret Smith dismissed the entire lawsuit, finding that the facts as alleged do not amount to a constitutional violation. The Court declined to exercise jurisdiction over Plaintiffs' pendent state law contract claim. On or about May 11, 2009, Plaintiff filed a Notice of Appeal to the Second Circuit County of Appeals.

## **State Cases**

### **American Independent Paper v. County of Westchester**

**When Initiated:** 2003

**Current Status:** An appeal is pending.

**Dollars Saved:** It is difficult to determine the dollars saved.

**Description:** Petitioner commenced a declaratory action asking the court to find as unconstitutional the County's Solid Waste Recycling Licensing Law. The County initially was successful in dismissing the petition on the basis that it was not timely filed in accordance with Article 78 proceedings. The Appellate Division overturned the lower court's decision and the matter continued through the discovery process. In or about October 2007, a non-jury trial was conducted before Liebowitz, J., acting Supreme Court Justice. In a written opinion, the court ruled in favor of the County and dismissed the petition. Petitioner has appealed and the matter is pending before the Appellate Decision.

### **Fitzroy Campbell v. County of Westchester, et**

**When initiated:** 2009

**Current Status:** The Complaint was dismissed

**Dollars saved:** If this case had gone to trial before a jury, and the verdict was in favor of plaintiff, it is difficult to estimate the amount of the verdict as jury verdicts in false arrest/assault and battery cases can run from \$15,000 to well over \$100,000.00.

**Description:** Plaintiff commenced this action in state court against the County, County police and an individually named county police officer. On August 5, 2008, Plaintiff was involved in a car accident on the Bronx River Parkway. When the police arrived, he was arrested based upon an outstanding bench warrant which issued from co-defendant Mount Vernon. Although the warrant was valid, it should have been removed from the system as Plaintiff had been remanded on the warrant in 2007 on an old DUI charge. Plaintiff alleged a variety of causes of action, including false arrest, abuse of process and assault and battery. Judge Mary Smith dismissed the complaint against the County Defendants in its entirety, agreeing that Plaintiff has completely failed to state a cause of action. The case will continue against Mount Vernon. Plaintiff has until approximately November 15, 2009 to appeal.

### **Hunting Ridge Motor Sports v. County of Westchester, et al.**

**When Initiated:** 2007

**Current Status:** Case Discontinued as against County of Westchester

**Dollars Saved:** Plaintiff was suing for \$750,000

**Description:** Plaintiff commenced an action against the County, Village of Port Chester and its landlord for flood and water damage to the exotic sports cars it sold at its dealership. The flood waters resulted from heavy rains. Plaintiff alleged that the County was negligent in its maintenance, design, and construction of roadways in the vicinity which resulted in excessive ground water flowing into plaintiff's dealership, as well as negligent in the maintenance of the Byram River banks where construction had occurred. After depositions, the County Attorney's Office persuaded plaintiff that there were no viable claims against the County. Ultimately, the plaintiff discontinued as to the County.

### **Lexington Insurance Co. a/s/o New York Medical College v. County of Westchester**

**When Initiated:** 2006

**Current Status:** Closed

Dollars Saved: If the County had lost at trial, the plaintiff could have recovered damages of approximately \$250,000.00.

Description: Plaintiff claimed that on June 29, 2005, a rain storm caused significant damage to its subrogor's property, which is located in buildings leased from the County at the Grasslands Reservation. It was alleged that the damage was the result of a defective storm drain system. Plaintiff argued that the County was responsible for the storm drain system and had failed to properly maintain and repair said system, despite having prior notice of its defective and deficient condition. Major flooding occurred to all parts of the campus. Plaintiff produced documentation showing property damage of approximately \$250,000.

After extensive discovery, the County moved for summary judgment on several grounds. The court granted summary judgment to the County on the ground that the claimant served the requisite notice of claim late and the case was dismissed in its entirety.

Carole S. Rubin and Julian Y. Rubin v. County of Westchester, Westchester County Department of Parks, Recreation and Conservation and Westchester County Department of Planning

When Initiated: 2008

Current Status: Case was discontinued with prejudice after the County moved to dismiss on the grounds of statute of limitations.

Dollars Saved: If this case went forward and plaintiffs were able to prove that the re-design of the water run off system in the Nature Center contributed to the damage their home sustained during the storm of April 15, 2007, a jury could have awarded plaintiff damages that ranged anywhere from \$75,000 to over a \$150,000.

Description: Plaintiffs alleged that their home sustained substantial damage and flooding to their basement on the day of the Nor'easter, April 15, 2007, as a result of an alleged re-design of the water run off system in February of 2007. After plaintiffs commenced their lawsuit, the County moved to dismiss on the basis that it was untimely because the date of the happening of the event which allegedly caused their damage took place in February of 2007, and not on the date of the damage, pursuant to the General Municipal Law Section 50-e. After review and consideration of the County's motion to dismiss, plaintiffs discontinued the action against the County with prejudice.

## **Article 78**

Louise Baker v. Kevin P. Mahon, et al.

When Initiated: 2009

Current Status: The Petition was dismissed.

Dollars Saved: If the petitioner had prevailed, it could have cost the County approximately 16 months of Nursing Facility Services.

Description: This Article 78 proceeding was commenced by Petitioner challenging the Respondent County's November 26, 2008, determination finding her ineligible for Nursing Facility Services including home waived services under the New York State Long Term Care



Program until March 2009 because she, *inter alia*, improperly gifted \$292,680 to her son prior to applying for the benefit. Petitioner subsequently sought a Fair Hearing before the Respondent New York State Department of Health which sustained Respondent County's determination. Petitioner claims Respondents acted arbitrarily, illegally, and unlawfully. Respondent County moved to dismiss the Petition on the basis that it failed to state any claims against the County. By Decision and Order dated March 19, 2008, the Court dismissed the Petition.

William Badders v. County of Westchester, et al

When Initiated: 2009

Current Status: The Petition was dismissed.

Dollars Saved: If the petitioner had prevailed, over the course of petitioner's expected life, it could have cost the County approximately \$950,000 in 207-c wage costs.

Description: This Article 78 proceeding was commenced by Petitioner, a former police officer, requesting that the Court compel the County to hold an evidentiary hearing to determine whether petitioner is entitled to 207-c benefits. In its Answer, the County argued that as petitioner had received a disability retirement pension, he was as a matter of law, no longer entitled to 207-c wage benefits. By Decision dated September 17, 2009, the Court agreed with the County's position and dismissed the petition.

CRP Sanitation, Inc. and Tarrytown R&T Corp. v. County of Westchester

When Initiated: 2008

Current Status: Petitioners' Claims Dismissed. Appeal Filed and Pending.

Dollars Saved: Difficult to determine although the success of the County Attorney's Office regarding this case prevented a dangerous precedent which would compromise the Solid Waste Commission's authority to monitor the local industry.

Description: Petitioners brought a CPLR Article 78 Action seeking to annul the Solid Waste Commission's ("SWC") decision which required that an independent auditor be retained by petitioners to monitor their business practices inasmuch as a former principal of their companies had been previously indicted in connection with events and transactions not related to the petitioners. The petitioners argued that the person in question had since been separated from the companies with no further ties to either; that the imposition of an auditor was done in violation of a lawful procedure, was arbitrary and capricious and was an abuse of the SWC's discretion. The County Attorney's Office, by way of written motion, successfully convinced the court to uphold the authority of the SWC to require an auditor be imposed on petitioners at their expense considering the history between the solid waste industry and the ever present influence of organized crime.

Dymitr Felenczak v. Westchester Medical Center, Westchester County Department of Human Resources, and Paula Redd Zeman as Commissioner of Human Resources:

When Initiated: 2008

Current Status: Petition Dismissed.

Dollars Saved: Not Applicable.

Description: Petitioner's position of Assistant Superintendent of Maintenance (competitive class, Grade 11) at WMC was abolished, effective January 10, 2004. He was placed on the preferred eligible list and remained there for four years until January 10, 2008. Petitioner, represented by Sapir & Frumkin, commenced this Article 78 proceeding in which he challenges various appointments to non-competitive positions and to higher salary grade competitive positions at

WMC since January 2004, as violating his preferred eligible status and his rights to retreat and/or bump. He also challenged the concurrent use of an open competitive and promotional eligible list in the selection of a higher salary grade position and claims an entitlement to the positions of Hospital Facilities Manager, Deputy Superintendent of Buildings, and/or Construction Coordinator. The County and WMC submitted motions to dismiss. Petitioner submitted his opposition to the motions and cross-moved to amend his petition to add another cause of action against WMC only. By Decision and Order dated January 16, 2009, Judge DiBella granted the County and WMC's motions to dismiss the petition and denied petitioner's motion to amend his petition.

In the Matter of the Application to Quash Non-Judicial Subpoenas duces tecum issued to Honorable Gerald E. Loehr, in his capacity as former Chairman of the Westchester County Solid Waste Commission; Bruce Berger in his capacity as Executive Director of the Westchester County Solid Waste Commission; and the Westchester County Solid Waste Commission pursuant to Civil Practice Law and Rules §2304.

When Initiated: 2007

Current Status: A Notice of Appeal has been filed.

Dollars Saved: Not applicable.

Description: This is a special proceeding to quash subpoenas *duces tecum* issued by Ravi Batra purportedly "pursuant to Mayoral [former Mayor Ernie Davis] appointment authorized by Article VI, Section 66 of the Charter of the City of Mount Vernon," and Civil Practice Law and Rules §2302(a), commanding the production of County documents from the County's Solid Waste Commission, its former chairman (Justice Loehr), and its current Executive Director (Bruce Berger). The County's grounds were that the subpoenas are procedurally and substantively defective. Subsequent to Hon. Clinton I. Young, Jr. assuming the office of Mayor of the City of Mount Vernon on January 1, 2008, and his revocation of any appointment of Mr. Batra, the County challenged the extension of any authority Mr. Batra may have beyond the term of former Mayor Davis. By Decision and Order dated May 27, 2009, Judge Rory Bellantoni determined Mr. Batra's authority was terminated by Mayor Young and dismissed the County's motion as moot.

Yellow Cab of Newburgh, Inc. and G&C Transportation, Inc. v. Westchester County and Westchester County Taxi and Limousine Commission

When Initiated: 2009

Current Status: Notice of Appeal filed.

Dollars Saved: Not Applicable.

Description: Petitioner operates a taxi service in Newburgh and was fined for picking up passengers within the County of Westchester without a WCTLC-issued permit. Following a determination and issuance of violations by the WCTLC Administrative Law Judge, Petitioner filed an Article 78 proceeding alleging that the County has no jurisdiction over livery/taxi vehicles not operating "point-to-point" within the County. The County moved to dismiss this proceeding by motion. By Decision and Order dated August 31, 2009, Judge Cacace dismissed the petition in its entirety.

### **State Division of Human Rights**

Dean Capote v. Westchester County Department of Planning

When Initiated: 2008

Current Status: The case has been dismissed.

Dollars Saved: It is difficult to estimate the dollars saved by this dismissal.

Description: In this State Division of Human Rights (“SDHR”) Complaint also filed with the U.S. Department of Housing and Urban Development (“HUD”), Complainant alleges unlawful discriminatory practices by the County pursuant to Section 296 of the New York State Human Rights Law and Title VII of the Civil Rights Act of 1964. Petitioner claimed that his application for Section 8 Rental Assistance was improperly denied based on his criminal record, disability, national origin and sex. The County had in fact denied the application because of Capote’s significant criminal history including 2 felonies that were pending at the time of the application and moved to dismiss on the basis that denial under such circumstances was proper. By Determination and Order after Investigation dated June 19, 2009, the SDHR agreed and found that there was No Probable Cause to believe that the County engaged in the allegedly discriminatory conduct. By letter dated August 7, 2009, the County was advised that HUD closed its file.

Yolanda L. Berbick v. Department of Social Services

When Initiated: 2009

Current Status: The case has been dismissed.

Dollars Saved: It is difficult to estimate the dollars saved by this dismissal.

Description: Complainant filed a Complaint with the New York State Division of Human Rights (“SDHR”) against the County of Westchester in connection with an application for public assistance. She claims that the staff was not trained in human resources, lost paperwork and discriminated against her on the basis of her race and financial status. On February 6, 2009, the SDHR dismissed the case based upon lack of jurisdiction inasmuch as Complainant failed to seek remedies (fair hearing) available to her through the Department of Social Services..

David A. Boudreau v. Westchester County Department of Social Services

When Initiated: 2008

Current Status: The case has been dismissed.

Dollars Saved: It is difficult to estimate the dollars saved by this dismissal.

Description: In this State Division of Human Rights (“SDHR”) Complaint, Complainant charged County Respondent with an unlawful discriminatory practice relating to public accommodation because of his disability, race/color in violation of Section 296 of the New York State Human Rights Law. Specifically, Complainant claimed that he was discriminated against because he was denied Food Stamp benefits and medical housing. After the County filed a position statement, the SDHR dismissed the case, issuing a Determination and Order After Investigation on October 28, 2008 finding that there was No Probable Cause to believe that the County engaged in the allegedly discriminatory conduct.

Jerard Rauso v. Westchester County, Department of Probation

When Initiated: 2008

Current Status: The case has been dismissed.

Dollars Saved: Difficult to estimate.

Description: Complainant is one of six Supervising Probation Officers employed by the Department of Probation who alleged that the Department gives preferential treatment to female

supervisors with regards to training, overtime opportunities, and assignments After filing the County's position statement, the State Division of Human Rights rendered a decision in favor of the County finding that there was no probable cause to believe that the County engaged in unlawful discriminatory practice.

**Jorge J. Vargas v. Westchester County, Department of Social Services, Jose Alonso as Aider and Abettor**

**When Initiated:** 2008

**Current Status:** The case has been dismissed.

**Dollars Saved:** It is difficult to estimate the dollars saved by this dismissal.

**Description:** In this State Division of Human Rights ("SDHR") matter, Complainant claims that he was sexually harassed by his supervisor and retaliated against for filing a sexual harassment complaint. On January 29, 2009, after the County filed its position statement and supplemental statement,, the SDHR issued a Determination and Order After Investigation of No Probable Cause and ordered the complaint dismissed and the file closed. On March 30, 2009, the EEOC issued a Dismissal and Notice of Rights informing the parties that it was closing its file on the charge inasmuch as it adopted the findings of the SDHR.

**James Waterhouse v. County of Westchester, Human Resources**

**When Initiated:** 2008

**Current Status:** The case has been reversed and dismissed on the merits by the Second Department Appellate Division.

**Dollars Saved:** It is potentially a significant amount of money if we had to permit re-takes of agility tests everytime a candidate failed.

**Description:** Petitioner alleged that HR's decision to remove him from the police officer eligibility list after he failed the physical agility test was arbitrary and capricious. Judge Bellantoni granted to the petition to the extent that he permitted Petitioner to re-take only the physical agility test. The Second Department reversed the decision and dismissed it on the merits holding that HR was proper in removing Petitioner from the list after he failed the test and that the County's test administration is proper.

**Goeto Vanterpool v. Westchester County, Department of Public Safety**

**When Initiated:** 2008

**Current Status:** The case has been dismissed.

**Dollars Saved:** It is difficult to estimate the dollars saved by this dismissal.

**Description:** Complainant alleged an unlawful discriminatory practice in violation of the New York State Human Rights Law, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act. Complainant alleged that because of his age and race he was not hired as a member of the Public Safety Emergency Force. After the County filed a position statement, the SDHR dismissed the case, issuing a Determination and Order After Investigation finding that there was No Probable Cause to believe that the County engaged in the allegedly discriminatory conduct.

**Recovery of Medicaid Claims/Liens**

**Recovery of Medicaid Claims/Liens**

New York Social Services Law enables the County to procedurally enforce its substantive right to pursue repayment from the responsible third parties by the placement of a lien for public

assistance on personal injury claims and suits against third parties to the extent of the expenditures made on the recipient's behalf. The Social Services Law also authorizes the placement of claims on estate assets for any assistance received by the decedent ten years prior to the date of death. DSS' recovery is realized when the claim of the public assistance recipient is resolved and/or when the estate is settled by the executor or administrator. In 2009, the Law Department's pursuit of these liens and/or claims resulted in the recovery of \$909,262.97.

In the Matter of the Estate of Kenneth Belding.

When Initiated: 2009

Current Status: Letters of Administration granted.

Dollars Saved: Potential partial recovery of Medicaid claim of approximately \$300,000.

Description: The Department of Social Services is a preferred creditor of the Estate for the sum of \$418,773.76 (hereinafter the "Claim") for assistance rendered pursuant to Social Services Law ("SSL") §§104 and 369, and Surrogate Court Procedure Act ("SCPA") §1811. Mr. Belding was predeceased by his wife Zoe Belding. The sole estate asset is real property located at 112 Bedford Road, Pleasantville, New York. Family Services Society, as the Court-appointed guardian of Kenneth Belding pursuant to Mental Hygiene Law Article 81, prior to his demise entered into a contract to sell the property for \$305,000. However, upon the death of Kenneth Belding, Family Services Society no longer had the authority to complete the sale, and the Administratrix did not complete the sale. The Village of Pleasantville and Town of Mount Pleasant included the property in their in rem foreclosure proceedings for tax delinquencies. If the property is sold at foreclosure, the Department will lose its claim. The County submitted a Petition to the court seeking an Order and Decree: (a) revoking the Letters Testamentary previously issued pursuant to Surrogate Court Procedure Act Sections 711 and 719; and (b) appointing the Public Administrator for Westchester County as Administrator for the Estate of Kenneth Belding pursuant to SCPA §1007. By Decree dated September 8, 2009, the Surrogate granted the Petition and issued letters of administration to the Public Administrator authorizing him to sell the real property. The net proceeds will then be available to partially satisfy the DSS claim.

NYU Hospital Centers v. County of Westchester

City Court : White Plains

When Initiated: 2008

Current Status: Matter withdrawn by Plaintiff

Dollars Saved: \$14,863.

Description: Plaintiff sought reimbursement for medical treatment provided to a County employee's child by MultiPlan, Inc., a preferred provider organization, under agreement with POMCO as third party administrator. Plaintiff alleged that payment owed by POMCO on the contract-discounted amount was late thereby triggering a clause in the related agreements requiring full payment for the medical services. The County Attorney's office served inordinate and extensive paper discovery demands on plaintiff's counsel litigating all aspects of this claim. Plaintiff's counsel withdrew the claim without answering any of the County Attorney's discovery demands.

**Bail Bond Forfeitures**

On March 7, 2009 we received a check in the amount of \$473,380.82, which represented payment of the forfeited bail bonds of Benjamin Smalls and Dwayne Tillman, plus interest. Far West Insurance Company, the holder of the bail bonds which were forfeited in 1999, has been in

liquidation since November 2001. We successfully filed Proofs of Claim with the liquidator and our claims were ultimately granted in full on October 11, 2006, by Order of the District Court of Lancaster County, Nebraska. With the help of Nebraska outside counsel, we ultimately prevailed and received a check for the full amount of the forfeited bonds, with interest.

## **PERB**

Westchester County Correction Officers Benevolent Association,

Patrick Garrett, Delegate v. County of Westchester and Rocco Pozzi, Commissioner

When Initiated: 2006

Current Status: The case has been dismissed.

Dollars Saved: It is difficult to estimate the dollars saved by this dismissal.

Description: The Charging Party filed an Improper Labor Practice Charge (“IP”) with PERB alleging that the County retaliated against Garrett for his alleged long standing union activity particularly after he filed a complaint against the County with NYS Department of Labor’s Public Employee Safety and Health Bureau. This officer was charged with misconduct which he claimed was protected union activity. A hearing was held and PERB dismissed the IP charge and found that the County did not engage in retaliatory conduct and no improper labor practice was committed.

## **Family Court Bureau**

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**Name of Accomplishment: Westchester County Child Fatality Review Team (CFRT)**

When Initiated: January 1, 2006

Current Status: Active.

Dollars Saved: When a child dies in Westchester County all the relevant child agencies, including the Special Prosecutions attorneys in the DAO, the designated attorney in the CAO, DSS, relevant Law Enforcement personnel, First Responders, treatment and victim assistance agencies come together to review the circumstances of the child’s death. This review often results in enhanced public awareness of potential child hazards, gaps in the responder system, the adoption of better practices with at risk families, and a continuing dialogue among all team members about the reduction of child fatalities in Westchester County. A goal of the CFRT is to institute better practices among all agencies treating at risk families and children, and to educate the public about risks for children.

Description: The mission of the CFRT is to improve the safety and well-being of children by changing systems that are failing to protect children. A secondary mission is to educate the

public about how children die. This is accomplished through a collaborative effort by government and community based agencies. The emphasis of the CFRT is a team approach to review child fatalities, review processes and history of the family with WCDSS, to create a corrective action plan when needed, and to write all fatality reports. Westchester County is the only county in NYS to write its own fatality reports.

**Name of Accomplishment: Integrated Youth Court (IYC)**

**When Initiated:** Planning began for the establishment of an Integrated Youth Court in March, 2007.

**Current Status:** Active.

**Description:** One Judge, sitting as a Family Court Judge and a County Court Judge presides over matters involving youth 16-19 years old who have both Family Court and Criminal Court involvement. It is a dispositional court, granting the Judge the authority to use all Family court dispositional alternatives in a criminal court matter. It is staffed by an attorney who is familiar with criminal and JD matters.

**Name of Accomplishment: Training Initiative – DSS**

**When Initiated:** April, 2007

**Current Status:** Active

**Description:** The training was offered to ensure that DSS case workers continue to understand the importance of trial testimony, to feel more comfortable testifying, and to have access to attorneys to ask questions and review trial procedures.

**Name of Accomplishment: Legislative Mandate on Educational Neglect Policy**

**When Initiated:** Legislation enacted in 2007 mandated that DSS work with local school districts to adopt reporting policies for educational neglect cases. The Family Court Bureau worked with DSS to draft a letter sent to all Westchester County schools in July 2008 outlining that requirement and enclosing a checklist form for identifying educational neglect. The Family Court Bureau also drafted a model policy to be sent to Westchester County schools if requested. That model policy was submitted to OCFS in August 2008.

**Current Status:** Active. The County continues to work with school districts to encourage adoption of accurate attendance policies, and reporting of truants to the State Central Registry if appropriate.

**Name of Accomplishment: Training Initiative – Local Police Departments in Westchester County**

**When Initiated:** January 2007

**Current Status:** Ongoing

**Description:** In an effort to have juvenile matters identified properly and treated appropriately the Family Court bureau attorneys continue to train local police departments as a need is identified, and remain in continuous contact with the youth police officers in the larger police jurisdictions.

**Name of Accomplishment: Westchester County Multi-Disciplinary Team (MDT)/CAC**

**When Initiated:** May 2004

**Current Status:** Active

**Dollars Saved:** The Westchester County MDT seeks to reduce trauma to child victims of abuse by ensuring that allegations of child sexual and/or physical abuse are investigated in a

collaborative fashion. Collaborative sex abuse investigations eliminates duplication of efforts and ensures successful Family Court prosecution thereby decreasing the amount of monies expended by Westchester County for investigation and prosecution of child sex abuse matters.

Description: The Westchester County MDT is an approved MDT as of 2009 and is fully functioning. Members include the District Attorney's office, the County Attorney's office, local police jurisdictions and DSS. It also includes the Children's Advocacy Center, and works collaboratively with the CAC to ensure timely case reviews, case tracking and joint investigations. One Family Court attorney oversees all MDT prosecutions. The team submitted an application to receive national accreditation, which is expected to be approved in 2009.

**Name of Accomplishment: Westchester County Attorney advising DSS in District Offices**

When Initiated: March 2007

Current Status: Active

Dollars Saved: Not Applicable

Description: The CAO currently provides legal services at the DSS District Offices. These services include staffing at the DO's, and lunch and learn trainings as well as monthly to quarterly meetings with senior DSS staff to review ongoing concerns. .

**Name of Accomplishment: Yonkers Board of Education Truancy Project**

When Initiated: January 2007

Current Status: Active

Dollars Saved: None

Description: The increase in gang related activities in Yonkers was identified as resulting in part from the high rate of truancy of students from Yonkers Public Schools. The CAO participated in numerous meetings with Yonkers PD, DSS, the judiciary, Probation, and Yonkers school personnel to address truancy issues, and helped draft a form to guide school personnel in calling the State Central Registry to report educational neglect. Additional attorneys have been hired to prosecute the increased educational neglect petitions that have resulted from this initiative. expected to result from the increase in calls to the State Central Registry.

**Name of Accomplishment: Mount Vernon Board of Education Truancy Project**

When Initiated: January 2009

Current Status: Active

Dollars Saved: None

Description: The success of the Yonkers Truancy project galvanized Mount Vernon to look at the truancy issues in its community. Additionally the increase in criminal activities, particularly homicides in Mount Vernon, has suggested that this new approach may help reduce criminal activity. The CAO has participated in numerous meetings with Mount Vernon mayor's office, the MV PD, DSS, the judiciary, Probation, and MV school personnel to address truancy issues, and the CAO and DAO conducted several trainings with school administration about calling the State Central Registry to report educational neglect. It is expected that this focus on educational neglect matters will result in additional cases being filed in Family Court in White Plains.

**Name of Accomplishment: Order Scanning Project**

When Initiated: July 2008

Current Status: Active

Dollars Saved: Previously all of the signed orders were copied and sent to DSS. Additionally Family Court bureau attorneys would spend considerable time looking for previous court orders.



This initiative will save money and time, by providing the opportunity to search for relevant court orders through the OnBase system.

Description: The Family Court proceedings generate thousands of orders a year. Many of these orders are needed by DSS to comply with federal and state audit requirements. The Family Court Bureau has scanned in all signed orders since July, 2008 and has indexed them to allow DSS and other Family Court bureau attorneys' access.