

---

# **DC APPLESEED CENTER REPORT**

---

## **D.C. OFFICE OF THE CORPORATION COUNSEL: CORE REMEDIES FOR LASTING REFORM**

**December 2000**



**DC Appleseed Center**  
733 Fifteenth Street, NW, Suite 330  
Washington, D.C. 20005  
Tel: (202) 393-1158  
Fax: (202) 393-1495  
[www.appleseeds.net/dc](http://www.appleseeds.net/dc)



## DC APPLESEED CENTER

The DC Appleseed Center is an independent non-profit advocacy organization dedicated to making the District of Columbia and the Washington Metropolitan area a better place to live and work, focusing primarily on strengthening the financial health of the District and enhancing the performance of governmental institutions that affect the District. The solutions DC Appleseed presents to the public, civic leaders, and government representatives are based on nonpartisan analysis and include concrete proposals for change. DC Appleseed is one of a number of local centers across the country fostered by the Appleseed Foundation.

### *Board of Directors*

Daniel M. Singer  
Fried, Frank, Harris, Shriver & Jacobson  
*President*

Peter D. Ehrenhaft  
Ablondi, Foster, Sobin & Davidow, P.C.  
*Treasurer*

Nicholas W. Fels  
Covington & Burling

John Graebner  
A.G. Edwards & Sons

Rev. Graylan S. Hagler  
Plymouth Congregational United Church of Christ

John Hechinger, Sr. (retired)

Carolyn B. Lamm  
White & Case

Kevin J. Lanigan  
Hogan & Hartson L.L.P.

Edward M. Levin  
U.S. Department of Commerce

Jacquelyn V. Helm  
Law Office of Jacquelyn V. Helm  
*Vice-President*

Roderic L. Woodson  
Holland & Knight LLP  
*Secretary*

Alan B. Morrison  
Public Citizen Litigation Group

John Payton  
Wilmer, Cutler & Pickering

Andrew Plepler  
Fannie Mae Foundation

Gary M. Ratner  
Washington Meeting Facilitators

Michael C. Rogers  
Metropolitan Washington Council of Governments

Lawrence Walders  
Powell, Goldstein, Frazer & Murphy LLP

Melody Webb  
Lobbyline.com

*Affiliations listed only for purposes of identification.*

Two members of DC Appleseed's Board of Directors recused themselves from consideration of this report: Daniel M. Singer, due to his position as a Special Assistant Corporation Counsel, and John Payton, due to his membership to the Office of the Corporation Counsel Advisory Group.

### *Staff*

Joshua S. Wyner, Executive Director  
Marjorie Goldman, Director of Development  
Emily Greenspan, Staff Associate  
Adam Lowe, Staff Associate  
Sara Pollock, Staff Associate

**D.C. OFFICE OF THE CORPORATION COUNSEL:  
CORE REMEDIES FOR LASTING REFORM**

***Acknowledgments***

The DC Appleseed Center thanks the following for their generous contributions to this project:

- ***Members of the DC Appleseed Office of the Corporation Counsel Project Team*** (listed below) who collectively dedicated many hundreds of hours to convening as a group, researching issues, formulating recommendations, and drafting this report.

**Marshall Bykofsky**, Arthur Andersen, Office of Government Services  
**Kevin J. Lanigan**, Hogan & Hartson  
**Jack Lipson**, Arnold & Porter  
**P.J. Mode**, Wilmer, Cutler & Pickering  
**Sara Pollock**, DC Appleseed Center  
**Mark Radke**, Fried, Frank, Harris, Shriver & Jacobson  
**Michael C. Rogers**, Metropolitan Washington Council of Governments  
**Joshua S. Wyner**, DC Appleseed Center

*Affiliations listed solely for the purposes of identification*

- ***Corporation Counsel Robert Rigsby and the staff of the OCC***, who responded promptly to DC Appleseed's information requests and provided extensive information about OCC's operations.
- ***Twenty-four people*** interviewed for this report who have knowledge about the D.C. Office of the Corporation Counsel, each of whom spent hours imparting valuable insights.
- ***Staff in City Attorney's Offices in Cincinnati, Denver, Nashville/Davidson County, Phoenix, and San Francisco, and the Office of the U.S. Attorney for the District of Columbia***, who provided essential comparative information.
- ***The International Municipal Lawyers' Association***, for its valuable counsel and advice.
- All of DC Appleseed's 2000 supporters, including the following foundations that provided support for this project:
  - The Morris & Gwendolyn Cafritz Foundation***
  - Naomi and Nehemiah Cohen Foundation***
  - Fannie Mae Foundation***
  - Philip L. Graham Fund***
  - Eugene & Agnes E. Meyer Foundation***
  - The Summit Fund of Washington***
  - Trellis Fund***
- ***IKON Office Solutions***, which printed this report free of charge.

*This report is dedicated to  
Charles F.C. Ruff,  
District of Columbia Corporation Counsel, 1995-1997,  
in recognition of his contributions to the District of Columbia.*

**D.C. OFFICE OF THE CORPORATION COUNSEL:  
CORE REMEDIES FOR LASTING REFORM**

**December 2000**

I.	INTRODUCTION AND EXECUTIVE SUMMARY .....	1
A.	The Continuing and Pressing Need for OCC Reform .....	2
B.	Summary of Recommendations .....	6
II.	REPORT METHODOLOGY .....	9
A.	Identification of Issues .....	9
B.	Surveys .....	10
C.	Local Interviews .....	10
D.	Comparative Data .....	10
III.	STRENGTHEN AND SUPPORT LEGAL WORK ON THE FRONT LINES .....	11
A.	Current State of Affairs: Key Findings of the Project Team .....	11
1.	While There Are Many Good Attorneys at OCC, the Quality of Legal Services Provided by OCC Attorneys, on the Whole, Needs Significant Strengthening .....	11
2.	OCC Has an Inadequate Number of Competent Support Staff .....	12
3.	OCC Attorney Salaries Continue To Be Too Low to Attract and Retain Attorneys of the Necessary Quality .....	12
4.	Pay Raises Are Not Timely Processed .....	13
5.	High Turnover Among OCC Attorneys Further (And Independently) Detracts from the Quality of the Office's Legal Services .....	14
6.	Training of OCC Attorneys (and Managers) Is Deficient .....	15
7.	The Lack of Senior Non-Management Attorney Positions Contributes to Ineffective Attorney Supervision .....	16
8.	OCC Staff Attorneys Receive Inadequate and Ineffective Day-to-Day Management, Support, and Supervision .....	17
B.	Impact of Continuing the Status Quo .....	18
1.	Recruiting is Hampered .....	18
2.	Retaining Lawyers Is Unnecessarily Difficult .....	19
3.	Work Quality is Uneven .....	19
C.	Recommendations .....	20
1.	Provide Additional and Better Support Staff .....	20
2.	Bring OCC Attorney Salaries to Par with Attorney Salaries at Similar Government Law Offices .....	20
3.	Take Immediate Steps to Resolve Pay Processing Difficulties .....	21
4.	Substantially Increase the Amount of Training Available – Mandated and Funded – for OCC Attorneys and Managers .....	21
a.	<i>Partnering with federal agencies</i> .....	22
b.	<i>Establishing an “OCC University” program</i> .....	22
5.	Create More Senior Non-Management Positions .....	22
6.	Establish Systems to Foster Greater and More Regular Oversight and Support of Line Attorney Work, Including Settlements.....	22
7.	Retain an Experienced Legal Services Manager. ....	23

IV.	ESTABLISH GREATER ACCOUNTABILITY .....	25
A.	Current State of Affairs: A Subjective and Ineffective Evaluation System .....	25
1.	The Current Performance Evaluation System .....	25
2.	The Results of this Evaluation System .....	26
B.	Impact of Continuing the Status Quo .....	27
1.	Low Morale .....	27
2.	Poor Quality Work .....	28
3.	Inefficiency .....	28
C.	Recommendations .....	29
1.	Transform OCC's Evaluation Process into a Performance Management System .....	29
2.	Using a "Competency Model," Review Staff Positions and Performance and Act Accordingly .....	31
3.	Hold Managers Accountable .....	32
a.	<i>Establish clear managerial standards for all OCC supervisors</i> .....	32
b.	<i>A 360° feedback process should be instituted for all supervisors</i> .....	33
c.	<i>Hold managers accountable both for their own actions and for         the performance of the attorneys and staff whom they supervise</i> .....	33
d.	<i>Replace managers unwilling or unable to manage</i> .....	33
V.	IMPROVE MANAGEMENT SYSTEMS AND STRUCTURE .....	35
A.	The Need for a Case Management System .....	35
1.	Current State of Affairs: The Absence of Office-Wide Case Management and Time Records at OCC .....	35
2.	The Impact of Continuing the Status Quo: Inadequate Tools for Supervision, Monitoring, and Workload Allocation .....	36
3.	Recommendation .....	38
a.	<i>Acquiring and installing a case management system</i> .....	39
b.	<i>Supporting the system</i> .....	40
B.	Establish Principles for Reorganization .....	42
1.	Current State of Affairs: Unclear Reorganization Principles and Too Many Layers of Management .....	42
2.	Impact of Continuing the Status Quo: <i>Ad Hoc</i> Restructuring and Inefficient Decision-Making .....	44
3.	Recommendations .....	45
VI.	CONCLUSION .....	46
	BIBLIOGRAPHY .....	47
Appendix A:	OCC Organization Description and Organizational Chart .....	A-1
Appendix B:	Summary of Responses to DC Appleseed's Survey.....	B-1
Appendix C:	Sample Survey Distributed by DC Appleseed .....	C-1

**Appendix A:**  
**OCC Organization Description and Organizational Chart**

The Office of the Corporation Counsel, which employs approximately 200 attorneys and supervises an additional 58, and has an annual operating budget for its central legal function exceeding \$26 million, is currently divided into the following six main operating units:

- (1) Appellate Division, which defends agency or court decisions appealed by affected parties.
- (2) Government Operations, which incorporates the General Counsel of subordinate D.C. agencies and provides counsel to those agencies and to the Office of the Mayor.
- (3) Public Protection and Enforcement, which includes the following divisions:
  - (a) Civil Division, which prosecutes civil crimes on behalf of the District;
  - (b) Criminal Division, which prosecutes juvenile crime, misdemeanor general crimes, and government fraud on behalf of the District;
  - (c) Child Support Division, which establishes, reviews, modifies, and enforces child support orders;
  - (d) Family Division, which handles all Abuse & Neglect and Domestic Violence cases;
  - (e) Investigations Division, which investigates all claims against the District; and
  - (f) Mental Health Division, which provides support to the Commission on Mental Health Services and the Mental Retardation and Developmentally Disabled Administration.
- (4) Torts and Equity, which includes:
  - (a) General Litigation Division, which defends the District, its agencies, and employees in civil claims and lawsuits, and
  - (b) Equity and Receivers Division, which handles all litigation regarding receivers, major equity, and programmatic cases pending or filed against the District.
- (5) Commercial Division, which represents the District in all activities related to economic development, personnel and labor relations, procurement, bankruptcy and finance, land use, public works, and utilities regulation.
- (6) Management and Operations Division, which coordinates all human resources functions, information systems, finance and budget, telecommunications, training, and internal and external communications for the Office as a whole.

**Appendix B:  
Summary of Results to DC Appleseed Survey**

**OCC Attorney Abilities**

Participants were asked to rank OCC attorneys on a scale from 1 to 5, 1 being lowest quality and 5 being highest quality.

	<b>Employees</b>	<b>Opp. Counsel</b>	<b>Co-Counsel</b>	<b>Judges</b>	<b>Agencies</b>	<b>Average</b>
<b>Knowledge</b>	4.02	3.35	4.47	3.00	4.05	3.78
<b>Case Management</b>	3.41	2.64	4.07	2.45	3.53	3.19
<b>Practice Skills</b>	3.87	2.63	3.64	2.91	4.11	3.59
<b>Demeanor</b>	4.02	3.73	4.10	3.38	3.77	3.84
<b>Service</b>	3.92	3.48	4.33	3.11	3.91	3.74
<b>Settlements</b>	3.45	3.14	3.00	2.06	3.44	3.13
<b>Settlement Ratings</b>	3.88	3.20	*	**	**	2.47
<b>Paralegal Support</b>	2.43	N/A	N/A	N/A	N/A	2.43
<b>Secretarial Support</b>	2.41	N/A	N/A	N/A	N/A	2.41
<b>Overall Ratings</b>	3.70	3.00	4.58	2.96	3.90	3.55

\* No co-counsel answered this set of questions.

\*\* This set of questions was not included in the judges' and agencies' questionnaires.

**Survey Participation**

The following numbers represent the number of surveys mailed to, and received from, each group.

	<b>Employees</b>	<b>Opp. Counsel</b>	<b>Co-Counsel</b>	<b>Judges</b>	<b>Agencies</b>	<b>Total</b>
<b>Number of surveys mailed</b>	196	61	121	150	38	566
<b>Number of surveys received</b>	59	8	4	21	11	103
<b>Percentage participating</b>	30.10%	13.11%	3.31%	14.00%	28.95%	17.89%



---

## **STAKEHOLDER SURVEY**

### **DISTRICT OF COLUMBIA OFFICE OF CORPORATION COUNSEL**

#### *The DC Appleseed Center*

#### **Survey Purpose**

- ◆ To assess performance of the Office of the DC Corporation Counsel (OCC) in the eyes of its key clients and stakeholders
- ◆ To identify strengths and improvement opportunities for major service areas

#### **About the DC Appleseed Center**

- ◆ The DC Appleseed Center is a nonprofit public interest organization dedicated to addressing systemic management and financial problems of the District of Columbia. The solutions DC Appleseed presents to the public, civic leaders, and government representatives are based on nonpartisan analysis and include concrete proposals for change. DC Appleseed is one of a number of local centers across the country fostered by The Appleseed Foundation.

*DC Appleseed Center Corporation Counsel Project*

---

**Your Organization and You**

What is your name? (optional)	
What is the name of your agency?	
What is your title?	

**Interactions with OCC**

Briefly describe your background and experience as it relates to your dealings with OCC, including the degree to which you are involved with your organization.	
-----------------------------------------------------------------------------------------------------------------------------------------------------------------	--

**Provide information about communication between individuals or units within your organization and OCC.  
Who are the people within your organization who have the greatest amount of contact with OCC (list no more than 5)?**

<b>Your Organization - Name(s) and Position(s)</b>	<b>Frequency of Contact</b>





*DC Appleseed Center Corporation Counsel Project*

	Low				High
	1	2	3	4	5
Please rate the level of support that you believe your organization receives from OCC.					

For scores lower than 4, please explain why you believe that your organization does not receive the support it needs from OCC.	
--------------------------------------------------------------------------------------------------------------------------------	--

**Quality of OCC Services**

Based upon your agency’s experiences as a client of the Corporation Counsel, provide, in the charts below, your opinion of the quality of your legal representatives (Please rate OCC services in the aggregate; do not rate individual attorneys).

KNOWLEDGE	Lowest Quality		Highest Quality			Specific Pros/Cons
	1	2	3	4	5	
Understanding of facts						
Knowledge of applicable law						
Knowledge of applicable rules and regulations						
Knowledge of your agency						

*DC Appleseed Center Corporation Counsel Project*

	Lowest Quality					Highest Quality	
<b>CASE MANAGEMENT</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>Specific Pros/Cons</b>	
Preparation of evidence							
Preparation of witnesses							
Case strategy							
Timeliness of Service							

	Lowest Quality					Highest Quality	
<b>PRACTICE SKILLS</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>Specific Pros/Cons</b>	
Jury selection							
Direct examination							
Cross-examination							
Presentation of legal documents							
Preparation of legal documents							
Overall quality of legal arguments							

*DC Appleseed Center Corporation Counsel Project*

<b>PRACTICE SKILLS</b>	<b>Lowest Quality</b>			<b>Highest Quality</b>		<b>Specific Pros/Cons</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
Preparation of motions and responses: – Legal reasoning						
– Writing ability						
– Research thoroughness						
Preparation of appeals: – Legal reasoning						
– Writing ability						
– Research thoroughness						

<b>DEMEANOR</b>	<b>Lowest Quality</b>			<b>Highest Quality</b>		<b>Specific Pros/Cons</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
Interaction with your agency's personnel						
Interaction with co-counsel						
Interaction with opposing counsel						
Interaction with parties						
Interaction with witnesses						
Interaction with the Court						

*DC Appleseed Center Corporation Counsel Project*

---

<b>SERVICE</b>	<b>Lowest Quality</b>			<b>Highest Quality</b>		<b>Specific Pros/Cons</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
Responsiveness						
Professionalism						
Courtesy						

<b>OVERALL RATINGS</b>	<b>Lowest Quality</b>			<b>Highest Quality</b>		<b>Specific Pros/Cons</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
Quality of OCC representation						
Quality of OCC's communication with you						



*DC Appleseed Center Corporation Counsel Project*

---

**Experience and Satisfaction with OCC - Settlements**

	Yes	No
Was your organization party to a case that settled in FY 1999?		

**If the answer to the preceding question is “yes,” please answer the following questions:**

	Lowest Quality		Highest Quality			
	1	2	3	4	5	Comments
Describe the outcome or terms of the settlement where “1” is the worst (e.g., least advantageous, most expensive, least efficient) and “5” is the best (e.g., most advantageous, least expensive, most efficient)						
All things considered, how advantageous were the non-monetary terms of the settlement?						
How costly was the settlement?						
How time efficient was the settlement process?						
Rate your overall satisfaction with the OCC’s role in reaching that settlement.						

*DC Appleseed Center Corporation Counsel Project*

---

**Additional questions about service:**

Do you have any specific areas for improvement at OCC?	
If you have experienced a change in the quality of your experience with OCC over the last 12 months, can you provide any reasons for this change?	

**Policy Questions:**

**Please indicate your level of agreement or disagreement with the statements below:**

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Explanation/Comments
Your organization has an appropriate level of involvement in OCC's functions.						
OCC should be permitted, in some manner, to charge its time/costs to the agencies it serves.						
Agencies should be responsible for paying settlements and judgments.						
Some legal work for agencies should be outsourced.						
Some OCC attorneys should be delegated to agencies to handle their work "in-house."						

*DC Appleseed Center Corporation Counsel Project*

---

**Additional comments about anything else related to this survey:**

---

---

---

---

---

---

## I. INTRODUCTION AND EXECUTIVE SUMMARY

As in other cities, legal services for most of the District of Columbia government are provided by a central agency, the Office of the Corporation Counsel (“OCC” or the “Office”), which serves as the chief legal officer for the District of Columbia government. Under District law, the OCC is responsible for “all law business of the . . . District, and all suits instituted by and against the government thereof.”<sup>1</sup>

Practically speaking, this legal requirement translates into several primary functions: handling all suits instituted by or against the District of Columbia; providing legal advice to the Mayor and District government agencies; prosecuting a limited range of criminal acts; and serving as the guardian *ad litem* for children who have been removed from their homes due to abuse or neglect.<sup>2</sup> When the District faces legal challenges, the OCC serves as its shield: protecting it from an avalanche of tort litigation; counseling it through complex statutory, regulatory, and policy changes; and vigorously asserting the District’s rights, when necessary.

Employing 198 attorneys and supervising an additional 58, the OCC carries out functions performed elsewhere not only at the city level, but also at the county and state levels.<sup>3</sup> Thus, the powers, duties, and operations of the Office are to some extent comparable to those of a state attorney general, county attorney, and city solicitor. One major exception is that the OCC’s criminal prosecution is limited to those cases involving juvenile crime, misdemeanor general crime, and District government fraud. All other criminal cases are the responsibility of the U.S. Attorney for the District of Columbia.

The Corporation Counsel’s responsibilities extend not only to the Mayor and to other District officials, but to all the citizens of the District as well. In fulfilling the duties of the Office, the Corporation Counsel “owes a duty of care to the public in general and to potentially-affected individuals.”<sup>4</sup>

The quality of the legal services provided by the OCC matters to the citizens of the District of Columbia. Perhaps not as obviously as the police or fire departments, the OCC is an agency that touches people’s lives. If the OCC does not do its job – or does a poor job – the children of single mothers do not get the financial support from their fathers that they need and deserve; the District is a less safe place to live and work; and access of the less affluent to medical care is impeded. And, in the final analysis, if the OCC does not do its job – or does a poor job – District taxpayers pay higher taxes, or are forced to do without other services, or both, in order to pay for OCC’s mistakes.

---

<sup>1</sup> D.C. Code Ann. § 1-361 (1981).

<sup>2</sup> In addition, representatives of the Office participate in or advise numerous city boards, commissions, and committees.

<sup>3</sup> In FY 2000, 291 attorney positions were authorized in the District, each of which reported to the Corporation Counsel. Of these, 225 were authorized for OCC’s central office, while 66 were allocated to other District government agencies and departments. As of April 18, 2000, OCC employed 198 attorneys centrally and 58 at other District agencies, leaving a total of 35 unfilled attorney positions. The FY 2000 budget for OCC’s legal function – including the 198 attorneys and associated support staff – was \$26,247,068.

<sup>4</sup> *Shifrin v. Wilson*, 412 F. Supp. 1282, 1302 n.23 (D.D.C. 1976).

This Report is designed, in large part, to assess how well the OCC currently is fulfilling its “duty of care” to all citizens of the District, and, based on that assessment and research into other government law offices, to make recommendations as to how the OCC’s performance might be improved. Any organization, regardless of the importance of its mission or the commitment of its personnel to that mission, is only as effective as its structure and culture allow it to be. How cases are assigned; how attorneys are hired, paid, and promoted; how attorneys are supported and supervised – all of the daily nuts and bolts of a functioning law office – translate the vital mission of the OCC into tangible results. These details are the subject of this Report and its recommendations.

**A. The Continuing and Pressing Need for OCC Reform**

In recent years, the OCC has been the subject of sharp and repeated judicial criticism, due to missed deadlines, failures to comply with discovery requests and motions, and other shortcomings. Just over a year ago, United States District Judge Thomas Hogan issued an order against the District for attorneys’ fees in connection with the *LaShawn A. v. Williams* litigation because the OCC had failed to file any opposition to the plaintiff’s motion for a fee award. In the order, Judge Hogan chastised the OCC for serious and repeated lapses in conduct over a period of several years.<sup>5</sup> Eventually, the award of fees was rescinded by Judge Hogan, but only after the OCC filed with the Court a document enumerating 52 instances in which an OCC attorney had been chastised in a bench or written opinion or order from January 1, 1997 through December 10, 1999 in cases before the U. S. District Court for the District of Columbia.<sup>6</sup> While many government law offices (and private law firms, for that matter) have had individual attorneys occasionally criticized or sanctioned for misconduct, the extent to which this has occurred with OCC attorneys in recent years is unacceptable by any measure.<sup>7</sup>

The *LaShawn A.* case was litigated at a time when the OCC had just begun to implement the provisions of the Legal Service Establishment Amendment Act (“LSEA,” or the “Act”) – the 1998 law enacted by the D.C. Council to help strengthen the OCC.<sup>8</sup> The Act was designed to overhaul comprehensively not only the OCC itself, but the entire legal representation of District government as well, including all agency counsel, creating an entirely new and unified entity called the District “Legal Service” under the overall supervision of the Corporation Counsel. Among other things, the Act required the Corporation Counsel to report, in writing, to the Mayor

---

<sup>5</sup> *LaShawn A. v. Williams*, No. Civ. A. 89-1754 (TFH), Order of September 23, 1999.

<sup>6</sup> *See LaShawn A. v. Williams*, Civil Action No. 89-1754 (TFH), Defendants’ Memorandum Documenting Violations of Federal and Local Rules and Court Orders Pursuant to the Court’s Orders Dated September 23, 1999 and November 3, 1999 (“*LaShawn A. Report*”) (filed December 10, 1999).

<sup>7</sup> The recent history of the Office is also marked by a succession of high-profile Corporation Counsel, none of whom served for more than two years. These frequent changes in leadership have resulted in a lack of continuity in vision, organizational structure, and general stability in the Office. The current Corporation Counsel has held his position for less than one year.

<sup>8</sup> D.C. Code Ann. §§ 1-609.51-.62 (1999).

and the Council no later than April 20, 2000, “concerning all aspects of the operation of the Legal Service since its establishment.”<sup>9</sup>

On May 31, 2000, Corporation Counsel Rigsby (who was appointed in December 1999) submitted to Mayor Anthony Williams and the District Council that report (“Legal Service Report”).<sup>10</sup> Apart from its complaints about lagging attorney salaries and an inadequate training budget – both of which appear to be well-founded and important – the Legal Service Report provides a highly favorable review of the OCC’s operations since April 1999. The Legal Service Report claims improvements at OCC in recruiting attorneys, attorney turnover, training, work quality, and attorney morale.<sup>11</sup> On the basis of claims like these, the Legal Service Report paints a picture of a highly functional and competent OCC.<sup>12</sup>

Although there are indeed capable, qualified, and hard working attorneys (and support staff) at the OCC, the picture painted by the Corporation Counsel’s Legal Service Report bears little resemblance to the evidence that has emerged from a 16-month study conducted by the DC Applesseed Center. Nor does the Legal Service Report’s favorable review of OCC activities since April 1999 appear at all consistent with recent appraisals by judges of the conduct and handling of District litigation by OCC attorneys in the courts.<sup>13</sup>

Looking at OCC's experience in this regard over precisely the same period covered by the Corporation Counsel’s May 31, 2000, Legal Service Report, DC Applesseed has no confidence that improvements made have resolved the OCC’s serious problems. For example:

- In June 1999, the U.S. District Court – having previously granted an attorneys’ fees petition against the District when the OCC failed to oppose it – denied the OCC’s retroactive motion to extend its time to respond, stating “The Office of the Corporation

---

<sup>9</sup> *Id.* at § 1-609.60.

<sup>10</sup> The formal title of the report is “Report on the Operation of the Legal Service during the Period April 1999 through April 2000.”

<sup>11</sup> Legal Service Report at 2, 12-13, 16, and 17-19.

<sup>12</sup> *Id.* at 19. The Legal Service Report also cites several statistics used to suggest improvements in office performance. *Id.* at 17-18. Few of these data cited are compared to prior years – offering no benchmarks by which to measure claims of improvement. Moreover, the data were provided by each section or division at OCC, each of which employed its own assumptions and data collection methods. See Letter from Robert R. Rigsby to Joshua S. Wyner, October 30, 2000, at 1 (“Each Deputy Corporation Counsel and Section Chief has been responsible for tracking relevant statistical information bearing on the relevant performance measures for his or her section”). Accordingly, these statistics are not sufficiently reliable to serve as the basis for any assessments.

<sup>13</sup> If the information reported by the OCC to the Court in *LaShawn A.* is accurate, there was an *average* of approximately one judicial criticism every three weeks for cases in federal court (of course, the majority of OCC cases are litigated in D.C. Superior Court) over the course of the 153-week period covered by the *LaShawn A.* Report (*supra* note 5). In fact, however, fully 25 of the 52 documented judicial criticisms in the report actually were made during just the 36 weeks between April and December 1999 – or an average of one such criticism *every ten days* during the first three-quarters of the period covered by the Corporation Counsel’s May 31, 2000, Legal Service Report. (Perhaps most remarkably of all, *seven* of these instances occurred *after* Judge Hogan ordered the OCC to file a report listing such criticisms.) In contrast, according to the information in the *LaShawn A.* Report, Office attorneys had been the object of an average of one such criticism *every month* during the immediately preceding period, January 1997 through March 1999.

Counsel has made a habit of failing to respond to motions, appearing late for Court (when it appears at all), misplacing Court orders and notices of hearings, and failing to respond timely, if at all, to discovery requests in many cases on the calendar of the undersigned as well as in cases before other judges of this Court.”<sup>14</sup>

- In September 1999, the U.S. District Court entered a default judgment against the District in employment discrimination litigation as a sanction for the OCC’s chronic failure in the case to respond to discovery and for making improper discovery objections, stating that a “certain arrogance” seems to “have been . . . instill[ed]” in the OCC, along with a “belief that the District of Columbia plays by different rules than those applicable to other litigants.”<sup>15</sup>
- And, in October 1999, the Corporation Counsel was ordered to appear personally to show cause why sanctions should not be imposed for the OCC having actively participated in a long history of misleading the court in litigation in which the District sought to avoid reimbursing hospitals serving low-income Medicaid patients. Condemning the OCC’s “reckless and baseless” defense and its “win at any cost strategy,” the U.S. District Court stated, “The Corporation Counsel’s Office . . . has unnecessarily taken the time of this Court with bogus and frivolous arguments. There is no doubt that the City wanted to save money by not paying the plaintiffs what was legally and fairly owed to them. The Corporation Counsel’s Office supported its client’s inappropriate position by appearing in Court and presenting a totally baseless legal position. The City’s lawyer should have refrained from participating in such conduct.”<sup>16</sup>

And, criticisms have continued to be levied by the courts after the period covered by the Corporation Counsel’s May 31, 2000, Legal Service Report – *i.e.*, May 2000 to the present.<sup>17</sup>

We recount these long-standing problems not merely to sound an alarm bell, but also to make clear that the challenges the OCC faces are so significant that they cannot be resolved overnight, or, in many respects, even over the course of a year. The commitment and dedication of the Corporation Counsel, the Mayor, and the D.C. Council will be needed to ensure that the

---

<sup>14</sup> *Barton-Smith v. District of Columbia*, No. Civ. A. 98-3026 (PLF), 1999 WL 1442343, at \*1 (D.D.C. June 1, 1999) (Friedman, J.); *see also Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 52 (D.D.C. 1999) (Friedman, J.).

<sup>15</sup> *Webb v. District of Columbia*, 189 F.R.D. 180, 186 (D.C.C. 1999) (Lamberth, J.).

<sup>16</sup> *District of Columbia Hospital Association v. District of Columbia*, 73 F. Supp. 2d 8, 16-17 (D.D.C. 1999) (Sporkin, J.).

<sup>17</sup> *See, e.g., Blackman v. District of Columbia*, Civil Action No. 97-1629 (PLF), slip op. at 1 (D.D.C. May 18, 2000) (Friedman, J.) (“The Office of Corporation Counsel’s past failures to comply with Court orders, to satisfy Court-imposed deadlines, or sometimes even to show up in Court for routine status conferences has been well documented . . . . What is disturbing in this and other special education cases is what appears to be a *new* trend in the Office of the Corporation Counsel, a penchant for litigating rather than mediating and resolving matters”); *Whatley v. District of Columbia*, Civil Action No. 98-2961 (PLF/JMF), slip op. at 2-3 (D.D.C. August 7, 2000) (Facciola, M.J.) (finding that the OCC had “set some sort of new record for failing to comply with the simple, clear requirements of the [Federal Rules of Civil Procedure]; they broke every rule pertaining to the answers to interrogatories and request for the production of documents”).

OCC's shortcomings are not ignored or papered over, that their causes are understood and receive sustained focus, and that the resources and commitment needed to reform the Office are provided.

Several of the Office's problems undoubtedly have been exacerbated by the District's overall financial and management troubles over the past decade. Not only have lawsuits frequently been brought against the District's poorly functioning agencies, but those agencies have often been unwilling or unable to cooperate with OCC attorneys charged with defending the city. Moreover, failure to pay OCC attorneys at rates competitive with other government law offices, coupled with District-wide difficulties recruiting and paying personnel and procuring supplies, have also made it exceptionally difficult to improve the OCC's internal operations.

To resolve its problems fully, the OCC will need additional resources. Unfortunately, it is impossible to quantify OCC's financial needs with any precision at this time. Other than keeping track of the number of cases filed against and by the District, OCC does not collect adequate data to quantify the Office's staffing and resource needs. The OCC fails to track in any reliable way workload data or other performance measures (including number of cases, case outcomes, time in which cases are processed, and attorney time records). In the absence of reliable statistical data, it is difficult for OCC to make its case for a particular budget increase.

Nevertheless, we have attempted in this Report to estimate the additional resources OCC needs based primarily on comparisons to other city attorneys' offices. DC Applesseed's analysis reveals that turning the OCC into a consistently well-performing law office will require competitive salaries for attorneys (estimated at just over an additional \$2 million annually), more paralegals and secretaries (estimated at just over an additional \$1 million annually), a case management system (which will cost hundreds of thousands of dollars), and better training (which will cost at least an additional \$50,000 - \$100,000 annually).<sup>18</sup> A portion of this \$3 million (or more) in additional funds almost certainly can be recovered over time through increased efficiency and reallocation of resources. However, it seems unlikely that such measures would provide the OCC with the entire amount that it needs to implement essential improvements, particularly in the near term. Accordingly, reform of the OCC will require that the Mayor and the Council commit to funding the OCC at a higher level.

Even if relatively modest savings can be generated internally and most or all of the \$3 million must be added to OCC's budget to enable effective reform, the costs associated with failing to provide adequate resources to the Office are unacceptably high. What is the value associated with delaying the permanent placement of a neglected child, failing to prosecute (or otherwise respond to) a juvenile crime, or failing to seek child support from a delinquent parent? In areas that have more quantifiable value – such as negotiating real estate deals for and defending damage claims against the District – the economic value of high-quality representation is apparent in the private sector: companies continue to hire top attorneys largely because they believe that better lawyering yields better bottom-line results. For such matters with an economic focus, the reality is no different for the District government.

---

<sup>18</sup> Support for these estimates is located in Sections II.C.1, II.C.2, and V.A.3.a of this Report.



## **B. Summary of Recommendations**

Based on DC Appleseed's research, it is clear that, if the Office is to flourish, there are several specific changes that can and must be made to the operations of, and services provided by, the Office of the Corporation Counsel. The reforms recommended in this Report fall into three general categories: (1) strengthen and support legal work on the front lines, (2) establish greater accountability, and (3) improve management systems and structure. A summary of our recommendations follows.

! *Strengthen and Support Legal Work on the Front Lines.* Most people interviewed by DC Appleseed described many OCC lawyers as “good people caught in a bad system.” While some necessary preliminary steps have been taken to enable these lawyers to do their jobs, much remains to be done. Specifically, the OCC must:

- *Dramatically upgrade the quality of paralegal and secretarial support.* The inadequate number and often poor quality of paralegals and secretaries at OCC creates terrible inefficiencies, contributes to poor work quality, and increases attorney turnover.
- *Increase attorney salaries to establish comparability in fact with federal government employees, as intended in the LSEA.* Line attorneys at OCC are significantly underpaid in relation to other comparable government workers – both federal attorneys in the District and attorneys in city attorneys' offices elsewhere – contributing to recruiting difficulties and high levels of turnover.
- *Give attorneys their raises on time with back pay.* As matters now stand, OCC attorneys are awarded pay raises which do not appear in their paychecks until months (and in some cases years) later, and, to add insult to injury, back pay has historically not been included when the raises are finally provided. It is difficult to imagine an Office that engages in such practices consistently attracting or retaining qualified attorneys.
- *Provide regular training to line attorneys and their supervisors.* OCC is not providing attorneys with adequate training in basic practice or supervisory/management skills. OCC's training budget of \$44-\$87 per employee is terribly low and plainly inadequate. In addition to increasing that budget (with the support of the Mayor and Council), the Office should aggressively explore partnerships with the private bar and local law schools to strengthen its training program.
- *Create more non-management attorney positions.* OCC often promotes attorneys to management positions without regard to whether the attorneys are likely to make good managers. The creation of a senior counsel career track for attorneys could help alleviate this problem.

- *Establish systems to foster better supervision.* OCC attorneys are too often “thrown to the wolves,” receiving inadequate supervision needed to ensure that the OCC’s client’s interests are being well-represented. Specific measures should be taken to improve attorney performance – including mandatory weekly meetings between supervisors and line attorneys and more regular review by supervisors of settlement offers.
- *Commit the resources needed to hire and support an experienced Legal Services Manager.* In an office that employs hundreds of lawyers, the focused attention of an experienced management professional is needed to ensure that line attorneys and managers consistently have available the tools they need to do their jobs well.

! *Establish Greater Accountability.* There must be consequences to good or bad actions. A culture that demands professionalism of every lawyer and staff employee is sorely needed in the Office. We recommend that the OCC:

- *Transform the evaluation system for attorneys and support staff* into a performance management system based on established core competencies;
- *Review legal and non-legal staff competence* and then both provide training to engender improvement based on specific plans and terminate employment where necessary; and
- *Hold OCC supervisors accountable* using clear standards to be set for all OCC attorneys with supervisory responsibility.

! *Improve Management Systems and Structure.* Frontline managers at OCC, the direct supervisors of line attorneys, were reported to be terribly inconsistent, with some neglecting to perform such basic tasks as assigning cases promptly, tracking caseloads, and meeting regularly with line attorneys to assess and support their work. DC Appleseed’s research strongly suggests that both the structure of the OCC and the tools available for managers to do their jobs need reform. We recommend that the OCC:

- *Install and support a case management system* – an essential systems improvement – which will facilitate better supervision and oversight of line attorneys, improve management of the Office as a whole, and increase available information for the development of budgets and organizational plans.
- *Adopt vital structural improvements* – eliminate some layers of supervision consistent with current management theory and best practice, which seeks to flatten management by eliminating tiers, and identify over-arching principles upon which further organizational restructuring will be based.

Due to the limitations on information available from the OCC, the recommendations made in this Report are based upon the best alternative information available: expert views (expressed in interviews) from employees, judges, and others familiar with the OCC;

comparative information from other jurisdictions; and documents provided by OCC. While OCC did not have much of the data we requested, we received full cooperation and valuable insight from the Corporation Counsel, Robert Rigsby, and his staff throughout the preparation of this Report.

\* \* \*

The OCC must significantly improve its basic operations so that it can move toward becoming an efficient and effective public legal advocate that protects the interests of the District and its residents in both the short and long term. We issue this Report, and the recommendations contained in it, with the recognition that many of the attorneys at OCC should be praised for their hard work in the past and recognized for their efforts toward improving the performance of the Office. And, Corporation Counsel Robert Rigsby is making a concerted effort to address several of the Report's recommendations – including the installation of a case management system and revamping of the evaluation process. We hope that the Corporation Counsel will continue his reform efforts in a manner consistent with this Report.

But the overall state of the Office is dire, and the residents of the District of Columbia deserve an improved, competent, and vigorous legal function that is perceived as such by the judiciary, the bar, and the public. Strong leadership will be critical for such positive reform to take hold and endure; the basic changes recommended in this Report must be driven from the top. No organization can function well without good leadership, which, in the case of the Corporation Counsel, means someone who has the legal, management, and political skills required for the job, and is committed to remaining with the Office for enough time to enable changes to take hold. Further, support and oversight by the Mayor and Council will be critical if lasting change is to be achieved. For the OCC to fulfill its duty to the public, both the Corporation Counsel and the District's elected leaders must devote time, energy, and resources to the OCC's revitalization.

## II. REPORT METHODOLOGY

The DC Appleseed Center commenced a study of the OCC in the summer of 1999. While receiving cooperation from the OCC during our research, DC Appleseed conducted this study independently, without direction from any D.C. government personnel.

The DC Appleseed Center Corporation Counsel Project Team, consisting of six volunteers together with two members of the Center's professional staff (listed in the front of this Report), used the following methodology.

### A. Identification of Issues

Based on preliminary meetings with representatives of the Mayor's Office, the OCC, and others in the public and private sector, the DC Appleseed Project Team created an outline of possible issue areas to address in this Report. These included:

- (1) accountability by OCC attorneys and supervisors for the quality of legal work;
- (2) management processes and structures;
- (3) the level of supervision, staff support, training, and other resources provided to line attorneys to perform their work, and the allocation of work within the Office;
- (4) the interaction between OCC and client agencies (including the needs and responsiveness of both OCC and those agencies);
- (5) the responsibility of OCC to the Mayor, the Council, and other parts of government; and
- (6) privatization and outsourcing of legal work.

DC Appleseed ultimately decided to focus on the first three issue areas. We chose not to address the fourth issue – the relationship between agencies and the OCC – because, pursuant to the recently enacted Legal Service Establishment Act, that set of relationships is in a period of flux. The fifth issue – the relationship of the OCC to different branches of government, referred to by many DC Appleseed interviewees as “identifying OCC's client” – involves an interesting set of questions. Ultimately, however, DC Appleseed decided that resolving such issues, while important, is significantly less urgent than improving basic functions, and that addressing such issues in this Report would distract from the more critical task at hand. Finally, the issue of privatization and outsourcing could not be adequately addressed given the state of existing data at OCC. While this Report makes reference to a few circumstances in which contract services might temporarily be retained, the complex issues of outsourcing and privatization are better pursued outside of the boundaries of this study.

## **B. Surveys**

Based on the issues identified in these preliminary meetings, surveys were developed in an attempt to identify and quantify the challenges facing the Office. Surveys were sent to 566 persons with in-depth knowledge concerning the OCC: co-counsel and opposing counsel, judges, attorneys and other employees within D.C. government agencies, and all current OCC attorneys. The surveys sought performance ratings of the OCC's work and additional input on policy matters. DC Appleaseed received 103 completed surveys, constituting a response rate of 18%. The responses contained in the surveys were tabulated and aggregated by type of respondent, question, and category of performance. A summary of responses is included as Appendix B, and a sample survey distributed by DC Appleaseed is included as Appendix C.

## **C. Local Interviews**

Using the data from and issues highlighted in the surveys, the Project Team established a written protocol covering issues related to personnel, work quality, internal management, accountability, and OCC/agency relationships. Over 30 potential interviewees were identified, of whom 24 agreed to a confidential interview. These individuals included current and former OCC employees (among them, four former Corporation Counsel), D.C. agency personnel, District of Columbia and federal judges, and others with perspectives on the OCC (including representatives from the D.C. Council, Financial Responsibility and Management Assistance Authority, and U.S. Attorney's Office). Each interview lasted from one-and-a-half to three hours, and was conducted by two or three Project Team members. Information gathered from the interviews was shared with the entire Project Team.

## **D. Comparative Data**

With the help of the International Municipal Lawyers Association (the primary association for city attorneys), DC Appleaseed identified five jurisdictions of comparable size to the District that are considered to possess well-run legal offices: Cincinnati, Ohio; Denver, Colorado; Nashville/Davidson County, Tennessee; Phoenix, Arizona; and San Francisco, California. DC Appleaseed sent each jurisdiction's law office – as well as the District's Office of the Corporation Counsel – a written survey asking for information on (among other things) budget, office organization, personnel policies, and relationships with city/county agencies. Extensive written materials were obtained from each locality to supplement their survey responses. Finally, using a written protocol, DC Appleaseed conducted follow-up telephone interviews with representatives of each jurisdiction's law office.

### III. STRENGTHEN AND SUPPORT LEGAL WORK ON THE FRONT LINES

The main purpose of this Report is to develop ways to strengthen the legal services provided to the District of Columbia by the OCC. To do that, the OCC must focus on strengthening and supporting the front line attorneys who provide such services. This requires decent pay, training, support staff, resources, and supervision. Components of each of these requirements are lacking at OCC, contributing to work quality that is too often poor.

For the OCC to shift its orientation towards strengthening front line work will require more than adopting the particular recommendations made in this section. A cultural change will be needed. As things now stand, the perception among attorneys who perform the front line work at OCC is that their opinions, their concerns, and, most importantly, the factors that affect their ability to perform high-quality work, are not seriously considered by OCC management. If the Office is to be significantly strengthened, the needs of front line staff must be a major focus of the Corporation Counsel and his top advisors.

This section assesses the current quality of legal services provided by OCC attorneys; forecasts the impact of continuing the *status quo* into the future; and provides specific recommendations for strengthening and supporting the work of line attorneys in a manner that will improve the quality of those services.

#### A. Current State of Affairs: Key Findings of the Project Team

##### 1. **While There Are Many Good Attorneys at OCC, the Quality of Legal Services Provided by OCC Attorneys, on the Whole, Needs Significant Strengthening**

Virtually everyone interviewed by DC Appleaseed noted that many attorneys at OCC are good and deserve greater support and compensation. When looked at in the aggregate, however, the perception is that legal work at OCC is uneven and, in many cases, inadequate. Specifically, DC Appleaseed's survey of OCC attorneys, judges, agency officials, and private counsel revealed significant weaknesses.

Striking among these survey responses is the substantial perception gap that exists between OCC attorneys and the judges before whom they practice regarding the quality of the legal services provided by OCC attorneys. Asked to rank OCC attorney performance on a scale of 1 (lowest quality) to 5 (highest quality), the 59 responding OCC attorneys and the 21 responding judges rated average OCC attorney performance as follows:

<b>Category</b>	<b>Judges</b>	<b>OCC Attorneys</b>	<b>Disparity</b>
<i>Demeanor</i>	3.38	4.02	0.64
<i>Service</i>	3.11	3.92	0.81
<i>Knowledge</i>	3.00	4.02	1.02
<i>Practice Skills</i>	2.91	3.87	1.04
<i>Case Management</i>	2.45	3.41	1.03
<i>Settlements</i>	2.06	3.45	1.39

Of all the “stakeholder” categories surveyed by the Project Team, judges ranked the performance of OCC attorneys lowest of all.<sup>19</sup> This perception gap suggests that current OCC staff – who obviously have a necessary role in improving the Office – do not recognize all areas requiring improvement, or the extent to which improvement in performance is required.

## **2. OCC Has an Inadequate Number of Competent Support Staff**

There is an insufficient number of support staff available to assist OCC attorneys, and many of those currently employed have not been trained, or are not otherwise able, to do their jobs. When compared to the five other legal offices surveyed by DC Appleseed, the OCC has the lowest ratio of secretaries and paralegals to attorneys. Specifically, OCC employs 27 such support staff for every 100 attorneys, whereas, in the five other jurisdictions surveyed, the composite average number of secretaries and paralegals is 45 per 100 attorneys, with a range of 31 to 61 per 100 attorneys.<sup>20</sup> Not surprisingly, attorneys surveyed by OCC itself and interviewed by DC Appleseed repeatedly raised concerns about the number of support staff.<sup>21</sup>

Most of those interviewed by DC Appleseed and many surveyed by OCC believe also that the quality of the existing support staff is deficient. The quality of secretarial and paralegal assistance received the lowest rating by OCC attorneys themselves of any performance category rated in DC Appleseed’s survey (including, among others, practice skills, knowledge, settlement ratings, and service).<sup>22</sup> Interviewees were particularly harsh when describing support staff, using terms such as “virtually nonexistent,” “nonresponsive to requests,” and “thin and weak.”

## **3. OCC Attorney Salaries Continue To Be Too Low to Attract and Retain Attorneys of the Necessary Quality**

OCC attorneys have long been paid lower salaries than attorneys with comparable credentials and responsibilities at other area government law offices. The D.C. Council acknowledged as much in 1998, when it established the District of Columbia Legal Service and provided that pay for OCC attorneys should be competitive with federal government attorney salaries.<sup>23</sup>

Unfortunately, while the Legal Service Establishment Act has resulted in modest salary increases, it has *not* brought OCC attorney pay into line with that for attorneys who work for other cities surveyed by DC Appleseed, particularly at the lower end of the attorney ranks. Specifically, the average OCC attorney salary is \$2,367 lower than the average in the other five

---

<sup>19</sup> See generally OCC Survey Results, Appendix B. While not all OCC attorneys appear in court, among the groups surveyed by DC Appleseed, judges represent the most independent evaluators of OCC work.

<sup>20</sup> Specifically, Cincinnati provides 31 secretaries and paralegals per 100 attorneys; Denver 54 per 100; Nashville/Davidson County 46 per 100; Phoenix 61 per 100; and San Francisco 33 per 100.

<sup>21</sup> See Survey 2000 Comment Summaries, 4-19-00 (“Survey 2000 Comment Summaries”), Comments I.21, 23, 24, attached to District of Columbia, Office of the Corporation Counsel, Strategic Plan, Draft May 5, 2000, as Section 11 of Appendix.

<sup>22</sup> See OCC Survey Results, Appendix B.

<sup>23</sup> D.C. Code Ann. § 1-609.58 (1999).

jurisdictions surveyed, even though the cost of living in the District is about five percentage points higher than the average in the five other cities.<sup>24</sup> Thus, when adjusted for the cost of living, the average pay for an OCC attorney is over \$6,500 less than the average pay for their counterparts in the five jurisdictions surveyed.<sup>25</sup>

Entry level attorneys at OCC are especially underpaid: the entry-level salary is \$40,373 per year. When salaries are adjusted for cost of living, the lowest paid OCC attorney makes less than an entry level attorney in any other of the five cities, with the average entry level attorney in the other jurisdictions making 19% more. Thus, even under OCC's new pay structure, entry-level OCC attorneys are significantly underpaid.<sup>26</sup>

#### **4. Pay Raises Are Not Timely Processed**

Until it is resolved, the severe problem OCC has processing pay raises promptly will prevent OCC from attracting and retaining qualified employees, and improving its organizational culture. Pay raises for and promotions of OCC attorneys are routinely not put into effect for months, or sometimes even years, after they are approved. Moreover, according to those interviewed, back pay has historically not been given for the period in which approved pay raises are delayed.<sup>27</sup>

The experience of OCC attorneys in this regard stands in sharp contrast to the experience of attorneys in other municipal legal offices DC Applesseed examined. When asked specifically, none of the people interviewed in those offices cited processing pay increases as a problem. Indeed, each of the five offices DC Applesseed examined provides promotions and salary increases promptly (within four to six weeks), and routinely provides back pay from the date of the promotion or salary increase.

Conversely, nearly every current OCC attorney with whom DC Applesseed spoke highlighted this problem as one of the most serious facing the Office. The issue of timely pay raises ranked prominently on the list of impediments to line attorneys' ability to do their work,

---

<sup>24</sup> The average attorney salary at OCC is \$71,493, as compared to a \$73,860 composite average from the other five cities, while the cost of living in the District is 1.23 of the national average, as compared to a 1.18 composite average from the other cities. "The Best Places to Live 2000," *Money Magazine*, available at [http://www.money.com/money/depts/real\\_estate/bestplaces/](http://www.money.com/money/depts/real_estate/bestplaces/).

<sup>25</sup> According to a recent OCC report, the pay gap between federal and OCC attorneys at like grade levels ranges from 5.8% to 10.4%, and, under federal pay raises proposed for FY 2001, the gap will likely increase in the coming year to between 9.5% and 14.1%. See Legal Service Report, at 12. While we were unable to evaluate the validity of the OCC's conclusions, they are consistent with DC Applesseed's findings regarding the disparity between OCC attorney salaries and those at other local attorneys' offices.

<sup>26</sup> However, pay for OCC's highly compensated attorneys is comparable to other jurisdictions. Specifically, when adjusted for cost of living, OCC's highest paid attorneys earn within 1% of the similarly adjusted rate of high pay in the five other jurisdictions. *Id.*

<sup>27</sup> At least for the provision of back pay, OCC has recently promised that its past practice will change. In documents detailing the current evaluation process, OCC states that "employees will be paid retroactively if delays occur in the processing of pay raises." ("Performance Evaluation Process For Attorneys and MSS (Management Supervisory Services) Employees," ("Attorney Evaluation Process") October 23, 2000, at n.3).



compiled by OCC management from responses to an internal survey distributed to all staff.<sup>28</sup> Based on these comments, it appears that this problem not only presents a barrier to retaining good attorneys, but also serves to distract those who remain from their primary responsibilities.

While not solely responsible, OCC contributes to pay raise delays.<sup>29</sup> According to several interviewees, pay increases that have been promised to attorneys sometimes sit on supervisors' desks for months before they are forwarded to the Office of Personnel. Moreover, DC Appleseed is unaware of any circumstances under which personnel responsible for such delays were reprimanded or sanctioned for such behavior.

## **5. High Turnover Among OCC Attorneys Further (And Independently) Detracts from the Quality of the Office's Legal Services**

The overall quality of work at the OCC also suffers from excessively high lawyer turnover in the Office. OCC reports a turnover rate among lawyers of 11% per year, whereas the composite average in the other jurisdictions surveyed by DC Appleseed is 7%. In several OCC sections, the turnover rate is remarkably high. The most dramatic example is in the Abuse and Neglect Section, where, as of the summer of 2000, only three of the 17 attorneys had been at OCC for more than one year. And, as recently as November 1999, the attorney in charge of the General Litigation Division reported a turnover rate of 64% for the prior 15 months.<sup>30</sup> Agency personnel and opposing counsel interviewed by DC Appleseed complained that, as a result of the high turnover rate, the OCC attorney working on a case often changes while the case is in progress, making it extremely difficult for the OCC to provide good legal advice or litigation services to its clients or to negotiate settlements with opposing parties.<sup>31</sup>

This is not to say that all turnover is negative: One former senior manager at the Office from the early 1990s observed that some turnover, particularly at the supervisory levels, can in fact help the Office avoid stagnation; keep bad habits from becoming entrenched; and be healthy and morale-boosting (including by creating promotion opportunities). A current OCC attorney – who has been with the Office nearly 20 years – agrees, stating that some of the older attorneys

---

<sup>28</sup> District of Columbia, Office of the Corporation Counsel, Strategic Plan, Draft May 5, 2000, at 5.

<sup>29</sup> Problems with the District's central personnel function are substantial. See, e.g., "Missing Paychecks in District Blamed on Shoddy Paperwork," *The Washington Post*, July 30, 2000, at C04; "D.C. to Drop \$20 Million Payroll System," *The Washington Post*, August 23, 2000, at B01.

<sup>30</sup> Memorandum from Martin L. Grossman to Robert R. Rigsby on November 19, 1999, at 1.

<sup>31</sup> OCC offers statistics that it claims prove an improvement in staff turnover rates in the 14 months ending April 2000, as compared to the 13 months ending October 1998 (Legal Service Report, at 13). Unfortunately, these data fail to show an overall improvement for several reasons: (1) the time periods compared are not the same length; (2) the results themselves do not establish a substantial difference in turnover rates (a reduction from 33 to 30); and (3) by the OCC's own admission, the turnover rate has again been quite high this year (*Id.*, at 13.). Moreover, the OCC has twice asserted the opposite conclusion for part of the 14-month period in which it claims, in the Legal Service Report, that turnover has improved. First, in *LaShawn A. v. Williams*, the OCC argued that its missteps over the 14 months ending October 1999 were due to 44% staff turnover in two litigation divisions. *LaShawn A. v. Williams*, Civil Action No. 89-1754 (TFH), Defendants' Motion for Reconsideration and Proposed Alternative to the Court's Order Dated September 23, 1999, (filed October 15, 1999) at n. 4. Second, in a Memorandum to Robert R. Rigsby on November 19, 1999 (at 1), Deputy Corporation Counsel Martin L. Grossman stated that the General Litigation Division "has lost 18 of the 28 attorney staff members since August of 1998."

who stay with the Office become “ossified.” It is clear, however, that the degree of turnover at OCC – particularly among front line attorneys – continues to be too high, and that this detracts from accomplishing the Office’s mission.

## 6. Training of OCC Attorneys (and Managers) Is Deficient

According to 17 of DC Appleseed’s 24 interviewees, OCC attorneys and managers do not receive adequate training.<sup>32</sup> This perception is not surprising, considering that the paltry budget for training for all OCC staff: in FY 2000, the training budget was \$26,000, or somewhere between \$44 and \$87 per attorney.<sup>33</sup> In fact, this amount has remained constant for the past five years.<sup>34</sup> DC Appleseed’s research revealed that some enterprising managers have arranged training for their staffs, but that the Office-wide program has not been well-run and is at least perceived to be not particularly relevant by many attorneys. Line attorneys interviewed reported receiving very little notice of training sessions. At least some OCC attorneys have participated in a 2-week trial advocacy “basic training” program run by the U.S. Attorney’s Office. Other attorneys described receiving no training in trial procedure prior to their first trial appearances, notwithstanding requests for such training.

Training opportunities that appear on paper for OCC attorneys may not, in fact, ever materialize. One interviewee noted that the Office apparently has a training schedule for new attorneys – which other new attorneys interviewed by DC Appleseed had never seen – of approximately 30 training lectures ostensibly given by senior attorneys. This attorney, however, had received only one such lecture. Moreover, the OCC does not appear to have adequately pursued the many possible opportunities available from training providers outside the OCC – including the U.S. Attorney’s Office.

Similarly, while management training at OCC has improved over the past year, more needs to be done. As in many other legal offices, OCC promotes attorneys to management roles based on their performance as attorneys, often without much assessment of their potential managerial skills.<sup>35</sup> As a result, many OCC managers do not have strong management or supervisory skills when they assume supervisory responsibilities and, thus, could benefit from management training.

The District of Columbia Council implicitly acknowledged the Office’s training deficiency in 1998, when it established the District of Columbia Legal Service and specifically directed the Corporation Counsel to, *inter alia*, “establish an annual mandatory program of continuing legal education for attorneys in the Legal Service, other than attorneys employed by

---

<sup>32</sup> Although other interviewees did not expressly identify attorney or support staff training as a current deficiency of the Office, none suggested it was adequate.

<sup>33</sup> The \$87 figure is based on the OCC providing training only to the approximately 300 attorneys on staff. If part of the training budget is allocated to the approximately 287 non-attorneys in the OCC, there would be only \$44 annually per person for training. (Letter from Robert R. Rigsby to Joshua S. Wyner, June 5, 2000).

<sup>34</sup> “Report on the Fiscal Year 2001 (FY 2001) Budget Request for the Agencies under the Purview of the Committee on the Judiciary,” Council of the District of Columbia (April 19, 2000) at 7.

<sup>35</sup> See Chapter 36, “Legal Service,” D.C. Personnel Regulations, at 4.

independent agencies.”<sup>36</sup> As required by the Act, the Corporation Counsel recently reported that, notwithstanding OCC’s inadequate training budget, OCC lawyers have received adequate training through “in-house trainers.”<sup>37</sup> This contradicts the experience of the OCC attorneys with whom DC Applesseed spoke.

The Council also explicitly recognized the need for management training,<sup>38</sup> some of which has been provided by the OCC, as outlined in its Legal Service Report.<sup>39</sup> Most significantly, OCC provided a day-long training program for all managers in April 1999, which alone appears to have met the legal requirement for management training in that year.<sup>40</sup>

Nonetheless, the OCC does not yet appear to have established more than an *ad hoc* management training program, either for managers, line attorneys, or support staff. Indeed, the commitment has not been made by the Mayor and the Council to provide any more training than is required under the Legal Service Establishment Act. Specifically, the D.C. Council’s Judiciary Committee requested a \$30,000 increase in the OCC’s FY 2001 training budget, but that increase was not included in the consensus budget sent to Congress.<sup>41</sup>

## **7. The Lack of Senior Non-Management Attorney Positions Contributes to Ineffective Attorney Supervision**

Unless they become supervisors, there are very few senior positions to which competent attorneys can be promoted. This results in one of three outcomes, none of which positively contributes to the Office’s operations: (1) the experienced and effective senior attorneys in the Office who have no particular affinity for management or desire to become managers are nevertheless promoted to supervisory positions, because they are the only promotions the Office can make; (2) the experienced and effective senior attorneys in the Office receive no promotions; or (3) the experienced and effective attorneys leave either because they do not wish to take on supervisory roles or because they are not promoted.

---

<sup>36</sup> D.C. Code § 1-609.57 (section entitled in pertinent part, “Continuing Legal Education”).

<sup>37</sup> See Legal Service Report, at 16.

<sup>38</sup> D.C. Code § 1-609.57 (section entitled in pertinent part, “Management Supervisory Skills Maintenance and Enhancement”) (stating that “Attorneys in the Legal Service who supervise 1 or more other attorneys as part of their normal duties shall maintain and enhance their management and supervisory skills through at least annual in-house or other training arranged or approved by their employing agency”).

<sup>39</sup> See Legal Service Report at Attachment 10.

<sup>40</sup> May 31, 2000 Memorandum from Robert R. Rigsby, Corporation Counsel, to Anthony A. Williams, Mayor, entitled “Report on Compliance with the Legal Service Act,” Attachment 10, “Office of the Corporation Counsel training program during the period April 1999 through April 2000,” at 3. Additional training is provided to a few managers through the Center for Excellence in Municipal Management, a public-private partnership between the District government, the Fannie Mae Foundation, and the George Washington University’s School of Business and Public Management that has as its mission to equip city managers with top-quality resources and training.

<sup>41</sup> “Report on the Fiscal Year 2001 (FY 2001) Budget Request for the Agencies under the Purview of the Committee on the Judiciary,” Council of the District of Columbia (April 19, 2000) at 7.

Two former OCC supervisors interviewed by DC Appleseed criticized the Office's record of promoting good attorneys to management positions to increase their salaries regardless of whether they have management skills or potential. To make matters worse, OCC does not provide these new managers with management training and often keeps their caseloads at such levels as to make it impossible for them to manage effectively. One current OCC attorney (who has been with the Office for nearly 20 years) believes that the lack of a non-management advancement track within the Office both hinders recruitment and increases turnover. OCC management states that the Office is in the process of trying to create more senior attorney (non-management) positions, but this effort apparently has been stymied by the requirement that a new civil service position description be created.

## **8. OCC Staff Attorneys Receive Inadequate and Ineffective Day-to-Day Management, Support, and Supervision**

OCC line attorneys are “thrown to the wolves” when trying cases or performing other legal work, and, in many cases, receive little, if any, assistance from older, more experienced attorneys. Featured prominently in DC Appleseed's interviews were reflections on the absence of daily support and supervision of line attorneys and the inadequate oversight of attorney work-product. Some attorneys went so far as to state that their supervisors had little to no idea what the line attorneys were working on. Senior management acknowledges this as one of the most pressing problems at OCC,<sup>42</sup> but it is unclear what OCC is doing that will resolve the problem.

Several DC Appleseed interviewees cited as a reason for inadequate management the absence of good mid-level managers at OCC, many of whom, they said, left the OCC during the budget crises of the 1990s. As a result, according to a current OCC supervisor, an entire generation of potential division deputies was lost, leaving current section chiefs – many of whom themselves are not sufficiently experienced to handle complex litigation – with no good role models.

The area of settlements offers a particularly acute example of how this problem manifests itself in poor work quality. By most accounts, OCC attorneys need to improve their performance in the area of settlements.<sup>43</sup> According to those interviewed, several sections at OCC neglect to assess cases for potential settlement value shortly after the case has been filed, and fail to consider thoughtfully or to track at all settlement offers when they are made. As a result, the Office often has inadequate information to decide which cases should be litigated and which should be settled. Indeed, five interviewees, including two OCC attorneys, cited this lack of assessment as a major factor in OCC's litigating cases that should be settled and vice versa.

The failure to assess routinely the exposure associated with cases also likely results in the misallocation of staff. Because government legal offices are often understaffed by opponents, it is especially important that the OCC allocate staff thoughtfully. One of the processes critical to

---

<sup>42</sup> Conversation with Robert R. Rigsby and Chere Calloway, July 25, 2000.

<sup>43</sup> In DC Appleseed's surveys, OCC attorney work received its lowest scores in the categories “Settlements” and “Settlement Ratings,” averaging 3.13 and 2.47, respectively, on a scale from one to five. This excludes the ratings on paralegal and secretarial performance, which were lowest overall but which do not pertain to attorney performance. See Appendix B, OCC Survey Results.

making rational staff allocation is the early assessment of the value of cases. According to those interviewed by DC Applesseed, the nexus between settlement values and staffing levels is not routinely considered at OCC, causing the OCC to staff complex cases in which plaintiffs seek enormous judgments at levels that are not much higher than staffing for small cases. While it is unreasonable to expect the District (or any government) to match private resources in such cases, regular and careful assessment of cases would improve the allocation of staff.

One attempt to improve supervision has not been well received. Among DC Applesseed interviewees, there was general consensus that the Office rule requiring two managers to sign subordinate attorneys' motions, briefs, and pleadings is an ineffective substitute for – and in some cases may detract from – real management and supervision.<sup>44</sup> Among other things, by the time a pleading must be signed, division and section supervisors are unlikely to have (if they ever have) sufficient time to review the pleading carefully, let alone direct that necessary changes be made. One relatively junior OCC line attorney noted that the five managers in this attorney's division (a deputy, assistant deputy, and three section chiefs) spend an inordinate amount of time reviewing subordinate attorneys' pleadings, rather than providing other forms of needed management, supervision, or mentoring. Another interviewee described this whole process as “not working as intended” and “largely cosmetic.” The “two signature” rule was one of the aspects of current operations most criticized by employees on an internal OCC survey.<sup>45</sup>

## **B. Impact of Continuing the Status Quo**

### **1. Recruiting is Hampered**

Ten of DC Applesseed's 24 interviewees specifically cited difficulties in recruiting high-quality attorneys as one of the major obstacles faced by OCC in improving the quality of the legal services it provides. High-quality young attorneys seeking opportunities to excel in the practice of law generally, or in public service specifically, are unlikely to be attracted to an office which is poorly perceived by judges and others in the community, and which in fact provides:

- little training;
- inadequate management, support, and supervision;
- few trained or competent support staff – such that a substantial portion of lawyers' professional lives will be spent doing their own clerical and paraprofessional work;
- inadequate non-staff resources;
- few opportunities for advancement;
- delayed pay raises and no back pay; and
- significantly lower salaries than even other government agencies – let alone the private sector.

---

<sup>44</sup> See OCC Office Order 38-99 (November 1, 1999).

<sup>45</sup> See Survey 2000 Comment Summaries, I.12.

And, attorneys seeking work in the District of Columbia have many other potential employers in both the government and private sectors. In this market especially, improving OCC work conditions is essential if good lawyers are to be recruited.

## **2. Retaining Lawyers is Unnecessarily Difficult**

Many attorneys leave OCC – often for federal government law offices – because of the pay disparity. Two interviewees cited low pay as one of the primary reasons attorneys leave OCC, with one of them stating that OCC attorneys often leave for other government jobs that may pay as much as 50% more than the OCC.

One attorney who worked at OCC in a supervisory capacity in the late 1990s described the low attorney salaries as fostering a descending spiral of work quality and morale. With low pay, attorneys cannot be hired fast enough to replace those who are leaving. Further, because of the low salaries, the lawyer said, the new attorneys that are hired often are not very good, and may indeed be worse than the ones they replace. This diminishing number and quality of attorneys in the Office makes life increasingly hard for those who remain – making it more likely that many of them will leave, as well.

In addition to low pay, problems in processing pay raises has particularly pernicious effects. Over the past year alone, several attorneys have threatened to sue the District, have actually sued the District, or have threatened to resign from OCC because they believed that they would not receive raises any other way (or at all).<sup>46</sup> Most of the current OCC employees interviewed by DC Appleseed stated that non-timely pay raises are a primary reason that attorneys leave OCC for other jobs. And according to several interviewees, senior management's tolerance of internal and external delays in processing pay raises indicates a lack of concern for line attorneys and is a central reason for distrust and resentment of senior management among those who remain.

## **3. Work Quality is Uneven**

Without adequate training, consistent supervision, and decent support staff, professional work quality would suffer no matter who could be hired or retained as attorneys. These shortcomings translate not only into lawyers not having the professional tools to do their jobs, but the primary resource of the Office – attorney staff time – being spent on administrative functions. Specifically, OCC attorneys whom the Project Team interviewed estimated spending anywhere from 25% to 50% of their time on tasks that could be accomplished by support staff – time which necessarily is taken out of researching and preparing cases. These conditions undoubtedly have negative impacts on the efficiency and quality of the OCC's work product.

There is substantial evidence that the remaining problems cited above – lack of advancement opportunities, non-timely pay raises, and poor pay – deeply affect morale. Both

---

<sup>46</sup> See December 1, 1999 letter from David M. Rubenstein to The Honorable Anthony Williams; February 9, 2000 letter from Eric P. Gallun and Kristi A. Kenniston to The Honorable Anthony Williams; May 12, 2000 memorandum from Sara Gold to Robert R. Rigsby, Arabella Wattles Teal, Sharon Styles-Anderson, Chere Calloway, Patricia Kuhn, Victoria Syphax, and Ingrid Jackson.

DC Appleseed's interviews and internal OCC surveys bear this out. Thus, for those attorneys who remain notwithstanding these problems, OCC can be a demoralizing place to work – a fact that cannot improve work quality.

### **C. Recommendations**

In order to address the deficiencies described above, DC Appleseed makes the following recommendations:

#### **1. Provide Additional and Better Support Staff**

New staff to support the work of line attorneys need to be hired at OCC, and some existing support staff should be terminated. Given developments in technology (including the universal use of personal computers), the need for secretaries in legal offices has diminished. As a result, paralegals are often relied upon more heavily to support legal work. The OCC ought to evaluate carefully its support staff and consider shifting a portion of the personnel budget from secretaries to paralegals.<sup>47</sup> Assuming that the number of attorneys remains constant, 36 new support staff would be needed to bring the District into line with other city attorneys' offices. The total cost of such additional support staff would be about \$1.3 million annually.<sup>48</sup>

In addition, given the deep concerns about the quality of secretaries, it is equally – if not more – important that OCC take steps to improve performance in existing positions. In addition to improving performance assessments and training,<sup>49</sup> OCC should consider reclassifying some secretarial positions to enable higher salaries to be paid that will attract candidates more qualified to be legal secretaries. Existing secretaries qualified for the newly classified positions should be retained subject to assessment of their skills and, where possible, training. To the extent that existing secretaries are not qualified to fill the new posts, temporary employees should be hired until the new positions are filled.

#### **2. Bring OCC Attorney Salaries to Par with Attorney Salaries at Similar Government Law Offices**

For all the reasons discussed above, offering salaries that are competitive with federal agency salaries is a patently *necessary* – but *not* sufficient – condition for improving the quality of legal services provided by the OCC. It is already the policy of the District, as embedded in the Legal Service Establishment Act. It is absolutely essential to attracting and retaining quality attorneys. Without data regarding the appropriate number of attorneys at OCC, it is difficult to assess the aggregate cost of such a pay raise. However, if the number of OCC attorneys remains

---

<sup>47</sup> Several interviewees believed that adding paralegals – as opposed to upgrading secretarial support – was the most important step that could be taken to reduce this burden.

<sup>48</sup> This figure was derived by multiplying the additional 36 support staff needed by the \$31,707 average salary now paid to an OCC secretary, and adding 15% for benefits. While this salary level is comparable to secretarial pay at federal government law offices, it is unclear whether this level of pay is adequate to attract competent support staff.

<sup>49</sup> This issue is addressed in detail in Section IV of this Report.

constant, it would cost \$2.2 million to bring OCC attorney salaries into line with those at city attorneys' offices elsewhere.<sup>50</sup>

### **3. Take Immediate Steps to Resolve Pay Processing Difficulties**

While resolving the pay raise processing problem will require improvements in the D.C. Office of Personnel,<sup>51</sup> the OCC must take steps immediately to ensure that OCC personnel do not continue to contribute to the delays. Specifically, the Corporation Counsel must make clear to everyone within the Office that pay raises are to be processed and sent to payroll within two weeks of attorney reviews, and that there will be significant consequences (*i.e.*, downgrading of evaluations and, for repeated offenses, demotion or termination of employment) for parties who are responsible for delays. In addition, until it is resolved, the Corporation Counsel should take every opportunity to make clear to the Mayor and others in the administration that this problem is an enormous impediment to retaining quality personnel.

### **4. Substantially Increase the Amount of Training Available – Mandated and Funded – for OCC Attorneys and Managers**

The OCC requires substantial additional training resources in order to improve the quality of legal services provided by the Office. Comparable offices that the OCC might look to for good training programs include the Phoenix, Arizona, City Attorney program – which operates a formal 12-week training program for new attorneys – and the Denver, Colorado, City Attorney program – which requires its attorney-managers to take six half-day management courses offered by the city government. Indeed, DC Appleseed recommends that OCC provide such management training to all OCC attorneys promoted to management positions.

Such training does not come without a cost. For example, the Denver City Attorney's Office, with only 98 attorneys and 208 total employees, has a year 2000 training budget of \$44,000, or \$212 per employee.<sup>52</sup> To implement a training program of equal quality to the Denver program, additional funds need to be allocated or appropriated beyond the District's current allocation of between \$44 and \$87 per attorney. For example, at \$212 per employee, the District would have to allocate approximately \$93,000 for OCC training, or a \$67,000 increase over the current training budget.<sup>53</sup> And, this number is almost certainly low, because, unlike Denver, the District does not now have in place a citywide government training center.

---

<sup>50</sup> This number was derived by multiplying the number of LSEA attorney positions (291) by \$6,570 (the difference between OCC's average salary and the composite average in the five cities surveyed by DC Appleseed, with all salaries adjusted for cost of living), and adding 15% for benefits.

<sup>51</sup> "Missing Paychecks in District Blamed on Shoddy Paperwork," *The Washington Post*, July 30, 2000, Page C04; "D.C. to Drop \$20 Million Payroll System," *The Washington Post*, August 23, 2000, at B01.

<sup>52</sup> The Denver City Attorney's Office pays a registration fee of \$40 for each set of the city-sponsored training sessions for each of its managers; additional funding is allocated to the Career Service Authority (the agency that handles all human resources and employee training functions) specifically to provide training to the City's employees.

<sup>53</sup> This cost does not include costs that result from the loss of productivity during the time that employees attend training sessions.



In addition, the OCC should consider the following:

a. Partnering with federal agencies

A representative from the U.S. Attorney's Office interviewed by the Project Team stated that OCC attorneys are invited to participate in the USAO training program when there is space available. This representative believes that OCC sends few attorneys to USAO training because (1) OCC cannot spare attorneys from the Office, and (2) OCC's training efforts are not very well organized. Another interviewee gave as an example of a successful partnership a circumstance in which attorneys from the District's Office of Banking ("DOB") were sent to the FDIC for training, after which the FDIC loaned to DOB two examiners – at no cost – for six months to help DOB set up its examination systems.

b. Establishing an "OCC University" program

A public/private partnership could be established to create a truly elite training program for OCC attorneys, which could also serve as an excellent recruiting tool. The Center for Excellence in Municipal Management, a public/private partnership that trains municipal managers, provides a useful model for this approach.

## **5. Create More Senior Non-Management Positions**

For reasons discussed above, the OCC must have some alternative for its potentially good career attorneys – *other*, that is, than (1) promoting them all into management positions, for which many will be unsuited or not interested in filling, or (2) not promoting them at all. The obvious solution is to create a real "senior counsel" track in the Office by increasing the number of senior, non-management positions into which good, experienced attorneys may be promoted. If an obstacle to this reform is the need to draft a new civil service position description, someone should be assigned to the task.

## **6. Establish Systems to Foster Greater and More Regular Oversight and Support of Line Attorney Work, Including Settlements**

Regular meetings (at least weekly) between supervisors and line attorneys should be mandated at OCC. Each of these meetings need not take long, but their existence will help foster both the practice and a culture of oversight which is desperately needed at OCC. The selection and implementation of a case management system (discussed in Section V) will enable such meetings to be more useful, as both supervisors and line attorneys will have greater access to workload information in advance.

DC Appleseed also recommends that the OCC institute a regular, mandatory process for reviewing the settlement value (whether monetary or otherwise) of all cases in which the claim is for more than a certain amount. The assessment should be done by two attorneys (and perhaps more for claims seeking over certain amounts or otherwise deemed particularly important), and should be performed when cases are first filed and whenever a settlement offer is made. For cases in which money is at issue, settlement values and offers should be maintained in a

centralized case management system together with case outcomes. These data should be periodically reviewed to assess attorney performance, assign attorneys to cases, and allocate resources within sections, divisions, and the Office as a whole.

The OCC should also establish a mentoring program. Each new line attorney should be assigned to one or more senior attorneys who can provide advice on routine and more complicated matters. These mentors may be, but need not be in all cases, the line attorney's immediate supervisor. Indeed, they need not even be employed by OCC. Given the apparent limitations of in-house expertise at OCC in several areas, the OCC should explore with the private bar or other government law offices the possibility of establishing such relationships with attorneys outside of the OCC.<sup>54</sup>

Finally, OCC should review the effects of its "two signature" rule, and modify it to ensure that it does not cause more harm than good. Whatever new policy is adopted, it should reflect the fact that some legal documents require a greater degree of scrutiny than others, depending upon the sensitivity and complexity of the matter involved, and should require different levels of document review accordingly.

## **7. Retain an Experienced Legal Services Manager**

In order to provide the resources line attorneys and managers need to do their jobs well, the OCC needs the sustained effort of an experienced Legal Services Manager. Attorneys who are actively engaged in legal practice are often diverted from fulfilling their management responsibilities. Moreover, attorneys are generally promoted because they are good lawyers, not because they are (or might be) good managers. In a government setting such as the OCC, the need for professional management is perhaps even greater than in other settings. In D.C. government particularly, systems such as personnel and procurement are difficult to navigate, systemic problems have historically been neglected, and resource limitations create additional challenges.

In the past few years, OCC has moved in the right direction. The past two Deputies for Management have been Grade 17 and have worked to oversee and manage all of OCC's administrative matters, among other duties. To fulfill the need for top management, it is critical that the Legal Services Manager have a strong background in legal administration, as well as the clear support of the Corporation Counsel. Whether the current organizational position and salary of the Legal Service Administrator is sufficient to attract and retain such a person is unclear. The OCC should make this position at least equal in pay and stature to the Corporation Counsel's other top deputies.

---

<sup>54</sup> Under the Intergovernmental Personnel Act, for example, federal employees can be loaned to state and local governments. See the Office of Personnel Management website, <http://www.opm.gov/programs/ipa/index.htm>.



#### **IV. ESTABLISH GREATER ACCOUNTABILITY**

##### **A. Current State of Affairs: A Subjective and Ineffective Evaluation System**

By all available indications, accountability has been sorely lacking at OCC. Too few supervisors, line attorneys, and support staff hold themselves accountable or have been held accountable for OCC's less than satisfactory results. And, at the time of this study, no system has yet been put in place to alter these circumstances, although steps recently taken to revamp the evaluation system appear to be headed in the right direction.

##### **1. The Current Performance Evaluation System**

The process for evaluating performance at OCC is in a state of transition. New performance standards were established for staff attorneys for the rating period that ran from April 1, 1998 through September 30, 1999. Evaluations for that rating period were completed in December 1999.<sup>55</sup> OCC claimed to have instituted new basic Individual Accountability Plans (IAPs) for the rating period that began on October 1, 1999.<sup>56</sup> However, as the provisions of the rules of the Legal Service Act mandating IAPs did not apply to FY 2000, OCC did not utilize them during the most recent rating period.<sup>57</sup> Thus, the evaluations due on November 9, 2000 will be based on a performance appraisal system that is virtually identical in form and content to that of the previous year.<sup>58</sup>

For the FY 2001 evaluation cycle (October 1, 2000 - September 30, 2001), OCC plans to use the new system which uses Individual Performance Plans (IPPs) and Individual Development Plans (IDPs) for management and supervisory personnel, and IAPs for non-supervisory attorneys. IPPs and IDPs are scheduled to be completed by October 31, 2000<sup>59</sup> and first year IAPs by November 30, 2000.<sup>60</sup> As the FY 2001 cycle is just beginning and the evaluations of the FY 2000 cycle are not yet in, our analysis was based on the last complete cycle for which there are results (FY 1999).

The attorney evaluation system that has been used for the past several years is subjective, elaborate, and ineffective. According to several interviewees, the evaluation system at OCC is, at best, cosmetic, and, at worst, worthless. This is particularly troubling because the evaluation system operates in a culture where accountability for results is sorely lacking.

---

<sup>55</sup> This is contemporaneous with the conduct of the survey portion of this study.

<sup>56</sup> Legal Service Report at 2.

<sup>57</sup> OCC, "Performance Evaluation Process For Attorneys and MSS (Management Supervisory Services) Employees," ("Attorney Evaluation Process") October 23, 2000, at 1.

<sup>58</sup> Attorney Evaluation Process at 2.

<sup>59</sup> Attorney Evaluation Process at 5.

<sup>60</sup> OCC, "Guidelines for Individual Accountability Plans," at 1.

The evaluation system provides that supervisors and supervised meet to set the relative weights to be given to each of several performance categories. There are five major performance categories for all attorneys and one specialized category for litigating attorneys:

- conduct of legal research and writing;
- oral preparation and presentation;
- efficiency, productivity, and work habits;
- professional conduct and effectiveness in working with others;
- office procedures; and
- litigation skills.

The deficiency however, does not lie in the categories, but in the standards of performance (or lack thereof). Attorney performance appraisals are based on subjective comparisons to expectations for attorneys in the same grade. There are no clearly defined competency standards nor are there any standard quantifiable outcome measures against which attorneys in each grade are measured. For example, attorneys are not asked to meet filing deadlines 98% of the time, they are instead asked to meet or exceed the expectations for the other OCC attorneys to meet the efficiency standards. OCC guidelines do not have measurable standards for efficiency or any other performance category.<sup>61</sup> Yet, in its Legal Service Report to the Mayor, OCC lauds its “Rigorous new performance standards....”<sup>62</sup>

This very subjective comparative evaluation is coated with a patina of objectivity. The evaluation instruments used by OCC are mathematically elaborate. The Attorney Work Plan and Performance Appraisal form is approximately a dozen pages in length and contains a precise computation formula for performance evaluations. Specifically, attorneys are given one of four ratings for each of five major performance areas, with a point total associated with each rating.<sup>63</sup> An attorney’s overall rating is then based on an aggregation of the five performance ratings, wherein each rating is given a relative weight based on the importance of the performance area to the particular job. Thus, the system implies a scientific approach, even though the evaluation process is, at its core, arbitrary.

## **2. The Results of this Evaluation System**

Unfortunately, the evaluation system used by OCC over the past few years has resulted in significantly inflated evaluations. As a result, high individual performance rates are routine while OCC performance is uneven. If we are to believe both the opinions of OCC work from those outside the Office and OCC’s internal performance assessments, the agency often fails to perform adequate legal work, but everyone is doing a great job.

---

<sup>61</sup> Obtaining favorable decisions in 75% of all appellate, trial and administrative actions was and is an OCC goal. (*See* Legal Service Report at 17) However, we received no evidence of this being included in anyone’s individual performance appraisal.

<sup>62</sup> Legal Service Report at 2.

<sup>63</sup> The following values attach to each rating level: Substantially Exceeds Expectations (SEE)–4; Meets Expectations (ME)–2; Needs Improvement (NI)–1; Fails Expectations (FE)– 0 (OCC, Instructions for Conducting Attorney Performance Appraisals (FY2000)).

For the period from April 1997 through March 1998, no lawyers received unsatisfactory ratings and 93.6% received ratings of excellent or better.<sup>64</sup> In the following year, when the Legal Service Establishment Act required new evaluation systems that tied pay increases to evaluations, still no lawyers received unsatisfactory ratings and an astonishing 97.2% received ratings of excellent or better.<sup>65</sup> These results directly contradict the evaluation of performance by every external stakeholder group surveyed by DC Appleseed, in which no performance measure averaged higher than a 3.8 on a scale from 1 to 5 (the equivalent of a B- grade).<sup>66</sup>

In the course of our study, we asked stakeholders to review their own experiences and assess the portion of OCC personnel, if any, that they judged to be incapable or unwilling to satisfactorily perform their duties. Estimates of non-performing attorneys ranged from 10-30%. Numerous examples of incompetent, uncooperative, and negligent behavior were cited to support these conclusions.

Support staff performance is a major OCC problem. Ten of DC Appleseed's 24 interviewees reported that many of OCC's support staff were either incompetent, unhelpful, or both. OCC's internal employee survey yielded the following comment from an attorney (and nearly identical responses from at least four other attorneys) regarding support staff: "There is absolutely no accountability for support staff, no work ethic, no supervision, and too much personal time, late arrivals and early departure."<sup>67</sup> And yet, no support staff received an unsatisfactory performance evaluation and 78.4% were rated excellent or outstanding.<sup>68</sup>

Supervisors, peers, and direct reports of the non-performing personnel are all very much aware of these employees' existence and transgressions. Yet, with few exceptions, infractions are not regularly documented and corrective action is nearly never taken. Thus, non-performing attorneys and support staff are retained without remediation, penalty, or censure.

## **B. Impact of Continuing the Status Quo**

### **1. Low Morale**

Morale at OCC has been adversely affected by the retention of poorly performing attorneys and the tolerance of non-performing support personnel. Organizations with staffing level constraints can ill afford to have significant portions of their work forces performing below peak efficiency. Highly performing personnel are pressed to assume the burden abandoned by their unwilling or unable colleagues. Soon these workers refuse to continue, or stumble beneath the weight of the added burdens.

---

<sup>64</sup> Letter from Robert R. Rigsby to Joshua S. Wyner, June 5, 2000, at 2.

<sup>65</sup> *Id.* at 2.

<sup>66</sup> See Appendix B, Summary of Results to DC Appleseed Survey.

<sup>67</sup> Survey 2000 Comment Summaries, I.19.

<sup>68</sup> Letter from Robert R. Rigsby to Joshua S. Wyner, June 5, 2000, at 2.

It is easy to see how acceptance of poor work, low productivity, and bad attitude can affect the morale of those who depend on other people's work product and those who must carry a portion of their load. Less obvious, but just as pernicious, is the effect that these factors have on overall Office performance. Failure to act against non-performers evinces poor and uncaring management. If the "people above" don't care enough to act in the organization's best interest, why should the "people below?"

## **2. Poor Quality Work**

As noted earlier, judges as a group among our survey respondents rated OCC attorneys most harshly.<sup>69</sup> The several published judicial opinions cited in the Introduction and Executive Summary of this Report reflect a justifiable judicial impatience with the Office's performance. This has been reported to result in judges sometimes exhibiting a predisposition to disfavor OCC lawyers and their clients. Six interviewees, including one federal judge, stated that OCC attorneys are sometimes at a disadvantage with judges simply by virtue of being OCC attorneys.

It is often the case that one must demonstrate ability before receiving the benefit of the doubt. However, even good lawyers feel the extra weight of the stigma painted upon them with the broad brush of OCC incompetence. They report having to work extra hard to prove themselves worthy in the eyes of the court.

Judges were not the only ones who were critical of OCC. Whether attributed to lack of training, lack of capacity, or lack of desire, many of those interviewed felt that the performance of OCC attorneys was too often inadequate.<sup>70</sup> Opposing counsel rated OCC attorneys' overall performance at only three on a scale of one to five. (This is only slightly higher than the judges' overall rating of 2.96.) One interviewee related a case in which a fellow attorney went on vacation, leaving the interviewee to cover a case for him while he was gone. Upon reviewing the case, the interviewee discovered that the vacationing attorney had failed to take the most elementary of actions, contacting key witnesses. The case was dismissed for lack of evidence when the interviewee took it to trial.

As reflected in Sections III and V, there is a need for greater supervision and oversight of the work of OCC attorneys. However, managing performance alone, without a continuous process that includes rewards, remediation, and removal, will prove inadequate. A system that neither rewards quality nor punishes ineptitude loses the capacity to differentiate between the two.

## **3. Inefficiency**

Poor performance by and inadequate numbers of support staff cause OCC attorneys to be terribly inefficient. Line attorneys at OCC reported spending between 25% and 50% of their time performing tasks that should be done by paralegals or secretaries (such as filing papers,

---

<sup>69</sup> See Section III.A.1 for a further discussion of this topic.

<sup>70</sup> Fully half, or 12 of 24, of DC Applesseed's interviewees referred to the quality of OCC attorneys' work as variable or uneven.

photocopying, and answering phones). For example, every attorney in the Abuse and Neglect Section calls hospitals in the District regularly to determine whether each individual case they are handling involves a history of abuse or neglect. One paralegal or secretary could be assigned to perform all such calls. In this and other areas, an enhancement of support staff would enable lawyers to spend more time on substantive legal matters.

### **C. Recommendations**

While evaluation systems used by many (if not most) government law offices at the federal, state, and local levels probably need to be strengthened, there is a particular need to improve the system used by OCC. Fulfilling the critical tasks of improving accountability and strengthening morale at OCC necessitate that the Office do a better job of assessing the relationship between each employee's performance and the Office's success (or failure) and of acting upon those assessments. Accordingly, DC Applesed recommends that the OCC create an effective performance management system; review staff performance under this model and take steps to reward, train, or fire employees accordingly; and hold managers accountable for their own performance and that of the employees they supervise.

#### **1. Transform OCC's Evaluation Process into a Performance Management System**

Performance management is a systematic process where continuous feedback is provided to reinforce the behaviors that are desired and necessary to achieve an organization's goals. Good performance management systems share several characteristics:

- A competency model forms the foundation of the system.
- The system is fully aligned with the organization's strategic objectives.
- Multi-source feedback incorporates customer-driven data to provide links to customer satisfaction.
- The system contains measures for both objective results and competency and development criteria.
- Appraisals are linked to compensation, promotion, development, and training.
- The process emphasizes clarity, simplicity, and communication.

Money is not the sole motivator in a good appraisal system. By emphasizing competency, organizations communicate their belief in professional excellence. Competencies are the knowledge, skills, and behaviors that are key to the successful performance of one's duties.<sup>71</sup>

In this and several other areas, the new FY 2001 IAP process represents an improvement over the previous model, but still requires substantial additional improvement if it is to become part of a performance evaluation system that, in fact, promotes accountability. For example, while the FY 2001 evaluation system is on target when it states that individual IAP goals should

---

<sup>71</sup> Competencies generally fall into two categories: core competencies and technical/specialist skills. Core refers to those generic characteristics that are associated with specific organizational levels or positions, whereas technical/specialist are those characteristics that are unique to particular professions or occupations.



be “aligned to the employees job duties, special projects, key initiatives, specific competencies, and/or training requirements,”<sup>72</sup> it misses the mark by failing to align the individuals’ goals with those of OCC. When an agency’s vision, strategy, and goals are communicated throughout the organization, employees understand their role in supporting the strategy and are motivated to perform. Thus, if OCC wishes to improve its success rate, its collection rate, or its on-time rate, it should set specific measures for the organization and drive behavior by mandating the same measures in each and every employee’s own IAP. This is also the way to establish causality between individual performance and organizational improvement.<sup>73</sup>

Another area where the new system falls short is that it is based only on downward feedback. Employee evaluations should be based upon more than supervisory assessments. Feedback should be solicited from both internal and external customers as well as from work team peers.

Evaluations should also include employee self-assessments. Although the FY 2001 process provides for input by employees in creating the IAPs, employees should also be required to conduct an annual independent self-assessment prior to meeting with the supervisor and prior to the supervisor’s final evaluation. In each self-assessment after the initial year of employment, employees should evaluate whether they met their prior year’s goals; if not, why not; and what steps they plan to take and support they will need to meet those goals during the following year. This process should encourage employees to take responsibility for their work and their professional development, while strengthening the relationship between supervisors and employees.

Effective performance systems create “balanced scorecards” for employee evaluations. They contain quantifiable measures of both process (*e.g.*, workload, overtime, *etc.*) and outcome (*e.g.*, success rates, cost savings, *etc.*). These measures are balanced with those that focus on employees’ meeting competency standards and career development goals. The new system pays homage to this by stating that, “Goals may include personal development needs...organizational goals...or career/professional development goals.”<sup>74</sup> The focus on development demonstrates the commitment to individuals’ career goals and aspirations. However, the permissive nature of the guidelines leaves the balance of the scorecard to the discretion of the individuals. OCC can guarantee a balance by mandating that a minimum number of goals be set in each area.

OCC should also make sure that their chosen quantifiable measures are defensible. Using SMART goals (Specific, Measurable, Attainable, Realistic, and Time related) is a best practice. However, OCC should avoid the temptation of assuring success by setting measures too low. An example of this might be OCC’s current goal of obtaining favorable decisions in 75% of all appellate, trial, and administrative actions. According to the statistics presented by OCC to the

---

<sup>72</sup> “Guidelines for Individual Accountability Plans,” at 3.

<sup>73</sup> Thus, there is no evidence to support the OCC’s assertion to the Mayor in the Legal Service Report that there was a chain of causality that linked improvements in individual performance evaluations to improvements in performance statistics of the Office, when individuals and Office were measured on different things. (Legal Service Report at 17) In fact, eight of the 11 “improvements” cited in the Legal Service Report (at 17-18) were mere statements of a single year’s results with no means of determining whether or not there had been an improvement.

<sup>74</sup> “Guidelines for Individual Accountability Plans,” at 3.

Mayor, all but one of the enumerated divisions and sections had met or passed this goal by 1999.<sup>75</sup> Again, outside assessments of OCC's work strongly suggest that, if in fact these goals were met, the goals were set too low.

In good performance systems, evaluations are not exercises without meaning or consequence. They are directly related to subsequent action by the organization. Compensation levels and bonus pools are often based on both overall organization and team or unit level performance. Distribution of those pools is based on individual performance assessments. The new performance management system has not addressed this issue. The system should be constructed to provide a compensation differential to those individuals and groups that exhibit superior performance. The failure to differentiate among high performers, average performers, and non-performers has made the existing system meaningless. Care must be taken to prevent the new system from suffering the same fate.

Notwithstanding our stated concerns, OCC is to be recognized for its progress to date in improving the evaluation system. Positive elements include:

- clearly defined processes;
- goals, measures, and expectations set and documented in advance;
- specific goal-setting section on evaluation form;
- simple forms;
- process and forms structured and standardized across departments;
- standardized evaluation process with flexibility to customize;
- formal meetings twice a year;
- planned review meetings (set time/place);
- commitment of executive management; and
- recourse for managing performance issues.

Every effort should be made to incorporate best practices as well as lessons learned from other jurisdictions into the new system.

## **2. Using a “Competency Model,” Review Staff Positions and Performance and Act Accordingly**

Many of those interviewed by DC Appleseed suggested that some personnel – particularly support staff and attorneys handling certain complex litigation and other specialized practice areas – did not have the basic competencies to do their jobs well. To resolve this problem, the OCC should immediately assess competencies needed for each position (or set of positions), assess whether current personnel possess those competencies, and either train or terminate employees who do not. The development of a “competency model” provides the opportunity to redefine positions and provides the basis for conducting an agency-wide personnel assessment. OCC should:

---

<sup>75</sup> Legal Service Report at 17-18.

- develop competence profiles for positions specifying the minimal, acceptable, and desirable requirements for core competencies and specialized/technical skills;
- assess the extent to which individuals meet the competence profile for the positions;
- identify the position/person gaps and develop training and development action plans, as appropriate;
- terminate employment of those who fall clearly below the established minimum competence level; and
- identify marginal performers and provide them with the training they need, monitor closely and document their progress, and, if they fail to achieve minimum acceptable levels within a predetermined time period, terminate their employment.

Undertaking this type of action will not be easy. Firing incompetent personnel is not common at OCC. Five of DC Appleseed’s interviewees reported that OCC non-performers were not dismissed either because it was too difficult, because they could not be replaced at available salary levels, or because they would be replaced by people who were worse.

This defeatist doctrine must be abandoned if fundamental change is to be achieved at OCC. To attract new hires, to retain good workers, and to create and sustain a high-performance workplace, OCC must cease to offer safe haven to those who will not or cannot perform their duties. Non-performers should be removed and replaced with competent employees. If competent employees can’t be found in a timely manner, temporary contract personnel should be considered. If large numbers need to be let go, entire functions could be temporarily contracted-out until such time as suitable regular employees can be hired.

The first steps of this cultural transformation may already be underway. One OCC manager interviewed reported being able to fire two attorneys and replace them with better ones, contrary to popular opinion that firing OCC employees is extremely difficult and replacing them even more so. However, enabling this change across the organization will require the leadership and serious commitment of the Corporation Counsel, as well as the support of the Mayor and the D.C. Council.

### **3. Hold Managers Accountable**

#### **a. Establish clear managerial standards for all OCC supervisors**

Standards for management performance should be based on the competency model established for OCC. Although specific standards may vary from organization to organization, it is not unusual to find that supervisory competencies and measures are developed in the following areas:

- Leadership: Motivating and empowering others in order to reach organizational objectives.
- Planning & Organizing: Organizing and arranging events, activities, and resources. Developing plans and monitoring progress against them.

- Quality Focus: Showing awareness of goals and standards. Following through to ensure that quality and productivity standards are met and that work is successfully completed.
- Persuasiveness: Influencing, convincing, or impressing others in a way that results in acceptance, agreement, or behavior change.

b. A 360° feedback process should be instituted for all supervisors

In a 360° appraisal system managers evaluate themselves, receive downward feedback from their supervisors, horizontal appraisals from their clients, customers, colleagues and peers, and upward feedback from the people they supervise (including agency personnel). Stakeholders provide feedback on the areas appropriate to their interactions. For instance, OCC clients would evaluate managers on matters related to customer service and satisfaction. Clients can submit evaluations on a case-by-case basis or they could be sent periodic customer satisfaction feedback forms. Managers would also be evaluated by their subordinates on their people management/development skills (*i.e.*, coaching/mentoring).

c. Hold managers accountable both for their own actions and for the performance of the attorneys and staff whom they supervise

Supervisors should be judged on their own achievements as well as the performance of their units and the accomplishments and development of the individuals they supervise. By measuring unit performance, managers will be motivated to build effective teams and develop an atmosphere of collective achievement. It will also encourage the development of processes to build quality into the work products being produced by the unit. At OCC, specific performance goals should be established for each organizational unit and managers' personal performance should be based, in part, on achievement of group goals.

Holding managers responsible for those they supervise improves the flow-down of accountability throughout the organization. It opens lines of communication and lets employees know that management is genuinely concerned about their performance. It encourages managers to document the behaviors that form the basis of promotions, merit raises, strategies for development, and dismissal for cause.

d. Replace managers unwilling or unable to manage

Attorneys in managerial positions must be more than good legal practitioners, they must be good (or at least competent) managers. Those that are not should be considered for newly-created senior attorney positions (*See* Section III.C.5) if they are willing and able to serve in such capacities. If not, after the requisite remedial training, failure to fulfill these duties should result in demotion or dismissal.



## **V. IMPROVE MANAGEMENT SYSTEMS AND STRUCTURE**

Front-line management of attorney work at OCC is, at best, uneven. In several divisions, conscientious managers keep track of attorney workloads, meet weekly with attorneys to review their cases, and attempt to provide attorneys with the help that they need, whether reviewing briefs or serving as a second-chair in litigation. However, there is substantial evidence that suggests that a number of managers fail to provide basic supervision or oversight. DC Appleseed's research revealed evidence that cases are sometimes not assigned until many days or weeks after they are received, pleadings served in the Office fail to make their way to the attorney(s) assigned, section chiefs make no effort to track caseloads systematically, and attorneys are left entirely on their own even if they are new or are handling complex cases of a kind they never before have handled.

There are several reasons that such management problems persist. Most significant among them is a pervasive failure to hold line attorneys accountable for their work, and managers accountable for oversight responsibilities. These issues are addressed in Sections III and IV of this Report. This Section addresses another set of reforms in management practice and structure that are critical to resolving the problems OCC has managing and retaining attorneys. While they cannot alone change the culture at OCC to one that demands accountability and provides support, the systemic changes suggested in this section – including obtaining a case management system and flattening the organizational structure – are essential. Without these improvements, good managers will struggle unnecessarily, poor ones will not receive the training or discipline they require, and work quality in the Office as a whole will remain inadequate.

### **A. The Need for a Case Management System**

#### **1. Current State of Affairs: The Absence of Office-Wide Case Management and Time Records at OCC**

Case management at OCC is poor. Among all of their substantive responsibilities, managing caseloads ranked lowest among OCC attorneys surveyed by DC Appleseed. Other groups surveyed by DC Appleseed support this conclusion: all but one ranked case management fifth out of six practice area responsibilities. Significantly, this perception is shared outside OCC by both those involved in litigation (judges, co-counsel, and opposing counsel) and those who receive non-litigation services from OCC (agency personnel).

An enormous impediment to resolving this problem is that the OCC currently has no comprehensive computerized case management system to track information and cases within the Office. The ability of large organizations to manage their work is directly influenced by their capacity to measure workload, productivity, and results. That is as true for government agencies as for private and public companies. Without a case management system, the OCC is severely limited in its ability to manage its most basic product – the matters on which its attorneys work – or its most important resource – the time of its professional staff. On a daily basis, the absence of a case management system makes the jobs of line attorneys, supervising attorneys, and upper-level managers unnecessarily difficult.

A well-functioning case management system captures the following data for general litigation matters: case name, case number, the judge assigned to the case, opposing counsel, the OCC attorney (or attorneys) assigned to the case, docket information, and reminders to counsel and counsel's supervisors. Relevant procedural deadlines are also maintained, and notes can be added by the OCC attorney working on the case. For non-litigation matters, somewhat different (but equally important) information is tracked, including the type and status of the matter and relevant deadlines to be followed. With such information, line attorneys are better able to track and organize their work, while supervisors can more easily oversee the significant caseloads that their attorneys handle. This is especially true in a large office such as the OCC, where the typical supervisor oversees seven or eight attorneys.

Well-designed case management systems also facilitate management at an aggregate (or macro) level. Nashville's well-designed case management system, for example, enables managers to access readily computer-generated calendars, caseload reports (by attorney, by agency, and other database fields), time record reports (by attorney, division, and the Office as a whole), and trends in workload. Such data greatly facilitate (and in some cases are indispensable to) fundamental Office functions, including distributing resources among divisions, assessing supervisors' performance, and devising and justifying budget requests.

While some individual divisions, or groups, within the OCC have set up their own systems for tracking their work (including both computerized and manual efforts), the OCC has no Office-wide system in place. Moreover, most OCC attorneys and other professionals do not keep time records or otherwise track the amount of time they spend working by the day or by individual matters.

At the time of this Report's release, the OCC had begun to test – among 50 attorneys – a case tracking system provided by a private vendor.<sup>76</sup> The Office further reports “plans to have a fully implemented system by March 2001.”<sup>77</sup> This appears to be a step in the right direction. However, several DC Applesseed interviewees recounted prior attempts that ultimately failed to investigate and test case management systems. And, at the time of this Report's release, no Office-wide system was yet in place; nor was there any evidence that necessary funds have been dedicated to pay for installation and support of the system being tested.

## **2. The Impact of Continuing the Status Quo: Inadequate Tools for Supervision, Monitoring, and Workload Allocation**

The divergent (and often inadequate) case management practices in OCC's divisions have several negative effects. First, the work of attorneys in some sections is not effectively tracked or managed. Even for those supervisors who attempt to do so, most must depend on reports from each line attorney as to the number of cases being handled by that attorney. Second, no such data is available Office-wide on a regular basis, making reliable comparative and composite information non-existent. Consequently, there is no tool to enable or promote active affirmative oversight of attorneys' caseloads.

---

<sup>76</sup> Letter from Robert R. Rigsby to Joshua S. Wyner, November 2, 2000, at 1.

<sup>77</sup> *Id.* at 1.

The absence of a case management system is also an impediment to resolving the frequent delays in assigning cases at OCC. Cases are not always promptly assigned to an OCC attorney when they come in, and some cases (or other assignments, such as legislative drafting projects) fall through the cracks. In several employee interviews, we received anecdotal evidence of negative impacts on the District (such as cases unnecessarily dismissed for lack of evidence) directly attributable to the fact that the cases were not assigned to an OCC attorney in a timely manner. Opposing counsel interviewed by DC Appleseed recounted several instances in which OCC attorneys were unprepared and told opposing counsel that the case has been assigned to the attorney at the last minute. One current OCC attorney interviewed by DC Appleseed noted that, because the OCC has no Office-wide case management system, managers can have (at most) only the most general sense of the number of cases the attorneys they supervise are working on, and the level of activity in those cases.

Some of these observations undoubtedly relate to situations in which attorneys are carrying heavy caseloads or are not (for whatever reason) able to handle their cases. DC Appleseed's research strongly suggests that these explanations describe only some of the problems, however, and, in any event, the presence of excessive workloads highlights the need for better case tracking.

The lack of caseload data also makes it extremely difficult for the OCC to distribute work evenly at each level, whether among divisions, among sections, or among line attorneys in a section. All of the line attorneys we interviewed pointed to the uneven distribution of work and the inability of supervisors to manage workloads fairly as an important source of resentment and low Office morale. While there will always be a tendency to assign more work to the best performing attorneys, better data could be used to track the workload of – and thus more easily lift the burden from – the most overworked OCC lawyers.

Furthermore, the lack of caseload data hinders the OCC's ability to plan and budget. Most significantly, there is no data to support budget requests for increased staffing. Most OCC attorneys, and many others, believe in good faith that a substantial number of additional lawyers are needed, but no one can support this assertion or quantify the need. The OCC acknowledges this shortcoming in its Draft Strategic Plan for Reengineering which noted: "What has been missing to support OCC's efforts to obtain more resources is solid data to support our claims."<sup>78</sup>

Finally, better data could help managers identify underperforming attorneys and respond appropriately. A recent extreme example of the costs of failing to track performance: an attorney at OCC was dismissed after 14 instances of failing to meet deadlines, missing hearings, and other similar lapses. While systems cannot guarantee quality performance, a well-functioning case management system would have enabled both the immediate supervisor and upper-level management to identify the underperforming attorney much more quickly.

---

<sup>78</sup> District of Columbia, Office of the Corporation Counsel, Strategic Plan, Draft May 5, 2000, at 18. Perhaps the best data available from OCC to support its assertion that more attorneys are needed are basic numbers of cases filed. For example, in *LaShawn A. v. Williams*, the OCC cited statistics that indicate that each attorney in the OCC's General and Special Ligation Divisions handled, on average, 110 cases over a 22-month period. See *LaShawn A. v. Williams* Civil Action No. 89-1754 (TFH), Defendants' Motion for Reconsideration and Proposed Alternative to the Court's Order Dated September 23, 1999, (filed October 15, 1999). Nonetheless, without information on the hours worked on each case and the outcomes associated with that level of effort, caseload data is inadequate.



The lack of professional staff time records is also of concern. Recent attempts by the OCC to collect such data as part of its reengineering effort reveal the shortcomings inherent in not having a reasonable system for keeping track of time. Specifically, in the Draft OCC Strategic Plan, the average workloads of OCC employees self-reporting their monthly hours were as follows:

- agency-based attorneys: 189.4 hours per month;
- OCC attorneys: 250.6 hours per month; and
- support staff: 371.2 hours per month.<sup>79</sup>

Based on interviews of OCC employees, it is simply implausible that, on average, OCC support staff work 80 hour weeks. OCC personnel with whom we discussed these statistics noted that these figures were “unreliable,” but could offer nothing more precise.

In sum, the OCC cannot afford to continue operating without a case management system that includes time records. This is a standard tool in other comparable public agencies, throughout government, and in private practices. The benefits that could result from a system are substantial:

- calendars for each attorney could be generated (and, in some systems, automatic reminders on approaching docket deadlines could be sent to the attorneys working on, or supervising, a matter);
- management reports (by attorney, by division, by group) could be generated on a periodic (weekly, monthly, quarterly) basis, with composite statistics needed for planning and budgeting;
- public access to information could be enhanced, as the current status of all matters becomes instantly available;
- inquiries from clients of the OCC (the Mayor’s Office, various District agencies) could be routinely handled in a more expeditious manner; and
- the standard research, motions, and other work products associated with a particular matter could be kept easily accessible, and new matters easily cross-indexed.

### **3. Recommendation**

The OCC is well aware of the need for a case management system. On January 4, 2000, in letters to Chief Judges of the United States District Court for the District of Columbia and the Superior Court of the District of Columbia, Mr. Robert Rigsby (then Acting Corporation Counsel) said “I have set a high priority for the development of automated information systems to enable us to track and calendar cases.”<sup>80</sup>

---

<sup>79</sup> District of Columbia, Office of the Corporation Counsel, Strategic Plan, Draft May 5, 2000, at 7.

<sup>80</sup> January 4, 2000 letters from then-Acting Corporation Counsel Robert R. Rigsby to judges at the D.C. Superior Court and U.S. District Court for the District of Columbia.

DC Appleseed recommends that OCC commit to the identification, acquisition, and implementation of an Office-wide computerized case management system that includes (or is linked to) a time record system. A basic tool necessary for the OCC to perform its mission, such a system would enable supervisors to manage line attorneys more closely, and more fairly. It would enable the rational distribution of workloads, and it would provide important data to justify budget requests and planning. It is naive to think that full reorganization or reengineering of the functions of the OCC can occur without the data that a case management system would provide.

To ensure the successful implementation of a case management system, it is critical that the OCC not merely purchase and install the system, but take several additional steps.<sup>81</sup> The remainder of this section sets forth some details regarding two key issues related to the successful creation and implementation of a case management system: (1) acquiring and installing a case management system; and (2) supporting the system.

DC Appleseed's Project Team interviewed personnel from two jurisdictions that have installed well-regarded computerized case management systems that serve their entire offices within the last five years: the US Attorney's Office for the District of Columbia and the Legal Department in Nashville, Tennessee. In addition, we obtained input from lawyers in the public and private sectors.

a. Acquiring and installing a case management system

The selection of a case management system can be a time-consuming process that requires dedicated leadership to (1) identify the needs of the Office, (2) establish priorities, and (3) drive the decision-making process to a conclusion. Because there are many systems available, both off-the-shelf and through customized software solutions provided either by external commercial vendors or within the government, there can seem to be an overwhelming number of choices. The process of understanding the needs of the organization (the OCC), and prioritizing those needs (as no one system can do everything equally well) is time-consuming. If done right, however, the time spent up front will save time in the long run. The selection could take six to nine months (for Nashville/Davidson County, it took nine months).<sup>82</sup> However, OCC should not allow this process to drag on any longer than is absolutely necessary. In the end, it may be advisable to acquire a relatively simple case management system, and, if necessary, modify Office practices to fit the system, as long as doing so will not be unnecessarily disruptive.

---

<sup>81</sup> According to research performed by The Standish Group in 1996, technology executives consider only 27% of technology projects to be successful, and 33% over-schedule, under-featured, and/or over budget. Forty percent of such projects are cancelled due to failure. "Developing Patterns," *Infoworld*, February 3, 1997.

<sup>82</sup> A January 4, 2000 letter from Robert R. Rigsby stated that "by early in the new year [2000] we will have in operation a consolidated and effective calendaring system." In a June 5, 2000 letter to D.C. Appleseed's Executive Director, Mr. Robert R. Rigsby, the Corporation Counsel, indicated the following: "OCC is continuing its search for an appropriate case-tracking and management system. This involves gathering information on how other law offices in the private and public sector handle case-tracking and calendaring issues, viewing demonstrations of various commercially available software, and discussing office requirements. In addition, paying for such a system remains an issue. OCC, however, has identified a possible source of funding through two existing grants. I have asked the Senior Deputy Corporation Counsel for Management and Operations to have a case-tracking and management system in place by the end of September 2000."

In the Nashville Legal Department and the U.S. Attorney's Office, each Office made an initial investment to install a basic system, and each has continued to customize its system since installation. The case management system used by the Nashville Legal Department was purchased from a commercial software vendor, which made some minor changes to the off-the-shelf system and trained the Legal Department staff on the use of the system. Legal Department personnel estimate that the initial investment for the software (including installation) was approximately \$170,000, and for necessary hardware was approximately \$10,000- \$15,000. The Legal Department pays the vendor a \$15,000 annual maintenance fee, which includes technical support and any development of the system that the Legal Department wishes to undertake. The Legal Department employs one staff person, paid an annual salary of \$35,000, to maintain the system and to perform the basic development of the system. The Legal Department continues to add features to the system as new needs arise.

The case management system developed by the District's U.S. Attorney's Office is only one component of a much larger Office-wide management system, which incorporates the Office's personnel tracking system and financing system, among other things. The original system was developed by consultants hired by the U.S. Attorney's Office over a period of approximately six months, and has been customized over time by outside consultants and paid staff. In each of the past five years, the U.S. Attorney's Office allocated \$1 million for the development and maintenance of the entire management system. In the first few years, system development was primarily performed by outside consultants. Recently, however, the Office has hired several of these consultants to work in-house at much lower rates, and the personnel with whom we spoke anticipated that the costs associated with maintaining and continuing to develop the system would decrease dramatically in the future.

Depending on the system selected, installation costs will vary, as will the difficulty of installation. The OCC now has computer hardware for its individual attorneys capable of supporting an Office-wide case management system. This capability did not exist until recently. However, even with the hardware, additional items (such as a separate stand-alone server) may be needed. The City of Nashville's "Corporate Legal Management System" ("CLMS") is a commercial product, developed by an external software vendor. That vendor installed the system and trained both the in-house technical staff (which provides system support) and the lawyers who would be using the system. The District's U.S. Attorney's Office developed and installed its own software with assistance from an outside database software vendor. This installation expertise, training, and support are generally more comprehensive than in-house support, but, of course, quality and service can vary significantly depending on the vendor.

Once the system is installed, OCC should evaluate its effectiveness and modify the system as appropriate. Such evaluations should be done frequently in the weeks and months immediately following installation and periodically thereafter.

b. Supporting the system

No case management system should be installed without the commitment to support it on an ongoing basis. There are many examples in the District of expensive software systems being

installed properly but nonetheless failing from a lack of technical support.<sup>83</sup> Again, here, leadership is vital to ensure ongoing system support. The system is likely to require one or two dedicated persons (or full-time-equivalents – spread out over a larger number of trained information systems personnel), and funding must be allocated accordingly.<sup>84</sup>

Of equal importance to the success of any system is the conduct of a planned change management effort. “The most daunting problems with technology implementation have nothing to do with technology ... You can get all the technical issues right, and you will still die ... The biggest problem is the lack of widespread readiness to adopt [technology] ... The No. 1 error is failure to invest adequately in change management.”<sup>85</sup> And the most significant barrier to successful change has been identified as “resistance to change.”<sup>86</sup>

General anxiety about change is an omnipresent reason for resistance. But employees resist technology for several additional reasons. They may not understand the business realities driving the goals for new technology or that technology will make their jobs easier. They may have been warned about technology threatening their jobs. And, employees that currently don’t have the skills to work in the new environment may be afraid that they will appear to be incompetent.

The OCC can increase the likelihood that these barriers will be overcome by using several “change enablement practices” such as the following:

- assessing organizational readiness to change;
- articulating a clear vision of the change;
- assembling the organizational structures necessary to ensure that the case management system is implemented well and used to its fullest potential (training groups, crisis management teams, *etc.*);
- creating mechanisms through which all OCC and other integral personnel can easily receive information and provide feedback regarding the case management system;
- conducting education among all relevant personnel regarding the basis and need for an Office-wide case management system; and
- ensuring that individuals and groups within the Office have all the necessary resources and information they need (training, support staff, *etc.*).

---

<sup>83</sup> The District recently discontinued using its \$20 million personnel system, which had been deemed beyond repair as a result of bad decisions in the years since its installation. “D.C. to Drop \$20 Million Payroll System,” *The Washington Post*, August 23, 2000, B01.

<sup>84</sup> The City of Nashville supports its system with one full-time person (supplemented with regular, contracted, updates from the commercial vendor). The District’s US Attorney’s Office has a full time person, and four or five other persons who are trained on their system and collectively make up another full time person-equivalent.

<sup>85</sup> Dr. Michael Hammer, President, Hammer and Associates. Dr. Hammer is the author of “Reengineering the Corporation” (HarperBusiness 1993).

<sup>86</sup> *Information Week*, June 20, 1994.

The commitment to timely data entry will also be critical. Leadership must impress upon staff the importance of and the benefits derived from keeping the system current, and the consequences of failing to do so. While the task can be made more efficient by importing data from other databases (the courts' databases, for example), some staff time will be needed to fulfill this task. However, the case management system need not create an undue burden on line professionals within the Office. Paralegals enter the majority of the data into the Nashville system, and the U.S. Attorney's Office employs and trains data entry clerks.

Most case management systems using a basic "Windows" environment are user-friendly and require hours (not days) of training for each user. The important thing is for the leadership to clearly commit to training and to require the use of the system, once in place.<sup>87</sup>

## **B. Establish Principles for Reorganization**

This section of our Report is intended to provide a possible framework within which the OCC can restructure its operations. The main conclusions pointed to by DC Appleseed's research are that, (1) over time, the OCC has created a structure that includes too many layers of management to enable sound oversight of attorneys and cases, instill accountability into a troublesome organizational culture, and support line attorneys as they seek to represent the District of Columbia effectively, and (2) the organization of the Office must be guided by an over-arching principle.

### **1. Current State of Affairs: Unclear Reorganization Principles and Too Many Layers of Management**

The OCC has historically been divided into divisions based on function, such as general litigation or family law. Within that framework, each of the past three Corporation Counsel – Payton, Ruff, and Ferren – has reallocated responsibilities among divisions to a greater or lesser extent based on his vision of the Office's needs.<sup>88</sup> Likewise, the current Corporation Counsel has taken steps to reorganize the OCC and to assemble the divisions of the Office (except the Appellate and Commercial Divisions) into four groups, each of which is headed by a Senior Deputy Corporation Counsel.<sup>89</sup>

Guiding principles have not been clearly identified and articulated to direct the current reorganization process. Is the Office being restructured, for example, to improve work processes, to respond better to client agency needs, or for some other purpose or set of purposes? Most of

---

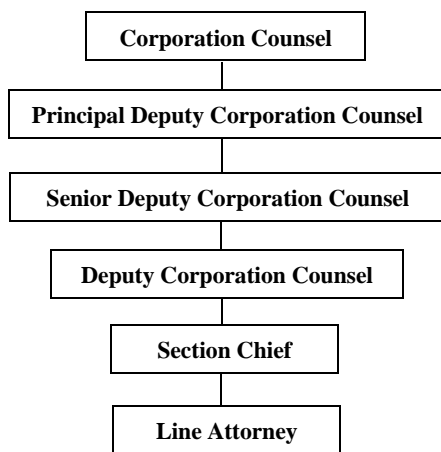
<sup>87</sup> When interviewed, the Deputy Director of Law in Nashville cited support from the Director of Law and the Mayor as the central factor in installing and maintaining an effective case management system.

<sup>88</sup> See Office of the Corporation Counsel Assessment and Realignment Plan - February 1993; Office of the Corporation Counsel Order Number 1-96, January 1996; and Office of the Corporation Counsel Reorganization Plan No. 1 - January 1998.

<sup>89</sup> On June 16, 2000 (corrected June 23, 2000), the Corporation Counsel issued Office Order No 14-00, making several organizational changes of the Office. Those are reflected in the Office organization chart dated 6/28/00, which is attached as Appendix A. This decision appears to directly contradict the May 2, 2000 Alignment Report, which proposed an organizational structure that grouped each of the functions of the Office under one of 11 divisions. The heads of those 11 divisions would report directly to the Corporation Counsel and/or the Principal Deputy Corporation Counsel.

the current OCC structure is oriented toward type of practice, implying that the central structuring principle is responsiveness to client needs. Indeed, the D.C. Council enacted legislation that grants the OCC power over Agency Counsel in order “to ensure that the law business of the District government is responsive to the needs, policies, and goals of the District.”<sup>90</sup> With his recent hiring of four Senior Deputies, the Corporation Counsel has seemingly affirmed his belief in this principle, dividing responsibility among the four Senior Deputies in a manner that mirrors the division of government at the client level, among four Deputy Mayors. However, Agency Counsel (along with Legal Counsel) were recently placed under the direct supervision of the Senior Deputy for Government Operations. This implies that some principle other than client responsiveness is driving organizational change. While there may be other valid principles that would justify this organizational placement of Agency Counsel, it is difficult to understand how the centralization into one division of all attorneys at agencies ranging from the Department of Health to the Metropolitan Police Department to the Department of Public Works will increase responsiveness to client needs.<sup>91</sup>

Within each division at OCC -- each of which has specific responsibilities -- work is divided among different layers of attorneys. Currently, there are six levels of attorneys at OCC. Line attorneys are (with a few exceptions) managed by Section Chiefs, each of whom reports to a Deputy Corporation Counsel. These managers are in turn supervised by the Principal Deputy Corporation Counsel, who, until this year, reported to the Corporation Counsel and officials in his immediate office. However, recently added to this structure are four Senior Deputies, who occupy a space between the Deputies and the Corporation Counsel. Corporation Counsel Robert Rigsby reported that “three attorney positions from the Enforcement Division were reclassified and one position from the Special Litigation Division (that was reorganized) was reclassified to provide the necessary funding” for the Senior Deputy positions.<sup>92</sup> Accordingly, the current management structure above a typical OCC line attorney appears as follows:



<sup>90</sup> D.C. Code § 1-609.52 (1999).

<sup>91</sup> An additional goal articulated during the ongoing re-engineering process is to normalize the span of control held by each supervisor. On June 1, 2000, the Corporation Counsel, in an internally distributed “Reengineering News,” noted that the span of control in divisions and sections of the OCC ranged from “a high of one supervisor with 38 employees (1:38) to a low of 1 supervisor with one employee” while “in a professional services agency like OCC, the span of control ... is generally 8-12.” OCC “Reengineering News”, June 1, 2000, at 4. Again, this problem may be significant, but its resolution should be guided by some overarching principle.

<sup>92</sup> Letter from Robert R. Rigsby to Joshua S. Wyner, June 5, 2000, at 4.

This organizational structure stands in sharp contrast to the other jurisdictions analyzed by DC Appleaseed. Specifically, four of the five jurisdictions surveyed by DC Appleaseed divide layers into four groups – line attorneys and three layers of supervision, including the lead city attorney.

## **2. Impact of Continuing the Status Quo: *Ad Hoc* Restructuring and Inefficient Decision-Making**

Without a unifying theme or principle to guide the re-engineering of OCC, each change that the Office undergoes will work completely independently of the others, rather than all of the changes working in concert to produce one vision of the Office. An example of the likely negative impact that will flow from failing to establish such a principle can be seen in current reorganization efforts. If, as it appears, the guiding principle of the current reorganization is to serve client agencies, it is unclear how the placement of Agency Counsel under the jurisdiction of a new Senior Deputy Corporation Counsel addresses the need for Agency Counsel to communicate productively and interact with the line attorneys who often are involved in the representation of the agencies before the courts. Fifteen of DC Appleaseed’s 24 interviewees identified poor or insufficient communication between OCC and District agencies as a significant problem, and three interviewees, including two out of three agency personnel interviewed, stated that the relationship between Agency Counsel and OCC attorneys is extremely unclear, leading to difficulty in working together and, occasionally, to hostile interactions.<sup>93</sup>

Placing Agency Counsel as a group under the supervision of a Senior Deputy does little to clarify their positions in and relationships with the rest of the Office. In fact, this development serves to divide the OCC line attorneys who provide work for agencies from Agency Counsel themselves, as each ultimately reports to a different Senior Deputy. One of OCC’s stated goals for Phase Two of the Reengineering is to more fully integrate Agency Counsel (along with the Child Support Enforcement operations) into the overall organization of the Office.<sup>94</sup> DC Appleaseed sincerely hopes that this integration will indeed take place, and that the OCC seriously considers placing each Agency Counsel in the same OCC Division as central OCC line attorneys who represent the agency.

In several ways, the recent addition of a fifth layer of management takes a toll on the Office as well. The new organizational structure (which now includes six layers of attorneys) runs contrary to more recent views of how organizations should be structured – to have a more “horizontal” organization structure instead of a “vertical” one. Among other concerns, layers of supervision are viewed as inevitably slowing the process of decision making. At the OCC, it appears that no Division Deputy other than the Deputies for the Appellate and Commercial Divisions any longer have regular and structural access to the Corporation Counsel; instead the Deputies communicate with their designated Senior Deputies, who in turn communicate with the Corporation Counsel or his Principal Deputy. Thus, the management structure also decreases the likelihood that the Corporation Counsel himself will be made aware of the overall performance of line attorneys – as well as their concerns and ideas.

---

<sup>93</sup> Improving these relationships was a central reason for providing the OCC with authority over agency counsel. See, e.g., OCC Background paper for Draft Bill entitled: “Legal Service Establishment Act of 1998,” submitted to D.C. Council May 22, 1998.

<sup>94</sup> OCC “Reengineering News,” June 1, 2000, at 5.

The existing structure contributes to decreased morale in the Office by giving front-line attorneys the impression that the Corporation Counsel is not concerned with their work conditions or views.<sup>95</sup> Among the most-mentioned comments on OCC's internal survey of employees were several centered on the current number of supervisors at OCC, particularly that the Office was becoming top-heavy with management.<sup>96</sup> Similarly, four of the five attorneys interviewed by DC Appleseed identified the increased layers of management as a problem, while none suggested that it was a welcome change.

Since there is both a limit on the number of employees for the Office and an already overextended budget for the Office, the creation and filling of the new positions and the salaries they require limit the availability of resources where they are otherwise needed, such as hiring more paralegals, installing a case management system, or providing better management training.

One of the "broad themes" of a recent report by an internal working group of OCC staff, vigorously and repeatedly stated, was that there should be no more than two supervisory levels in the Office (those being the Section Chiefs and Division Deputies) between the line attorneys and the Corporation Counsel. Indeed, the group concluded not only that a "third-tier" level of supervision was unnecessary, but also that the tier "necessarily drained off valuable resources better utilized at the line attorney and section chief levels."<sup>97</sup> In sum, the multiple layers of supervisory attorneys both decreases performance in the short-term and serves as a long-term impediment to improved management.

### **3. Recommendations**

The structural changes in the OCC's organization should (1) be based upon identified and articulated guiding organizational principles related to the substantive work of the Office (and not merely the structure of the rest of the District government); and (2) result in a reduction in the number of tiers of supervision.

OCC needs to identify a central organizational principle to guide its reengineering. The most recent reorganization was done without performing any of the process mapping or workload analysis that could have greatly informed the restructuring. As a result, the changes that have thus far taken place have been largely reactive to the internal and external criticisms of OCC's operations. Each Corporation Counsel may select a different guiding principle to direct change, each of which is justifiable. However, in the absence of any such principle, OCC will continue to fix individual problems, rather than improving the structure and operations of the Office as a whole.

In devising these principles, the Corporation Counsel should consider the OCC's recent history. Over the past eight years, there have been three substantial reorganizations of responsibilities, as each successive Corporation Counsel has issued orders reflecting his judgment

---

<sup>95</sup> "Appointments Rile D.C. Legal Office," *The Washington Post*, October 2, 2000, at B03.

<sup>96</sup> Survey 2000 Comment Summaries, I.3-I.5, I.14-I.16.

<sup>97</sup> Alignment Group report to the Office of the Corporation Counsel, May 2, 2000, at 7 (attached to District of Columbia, Office of the Corporation Counsel, Strategic Plan, Draft May 5, 2000, as Section 2 of Appendix).



as to how the Office might be better organized. The frequency of this restructuring, the persistence of management problems notwithstanding these reorganizations, and the presence of more basic and far-reaching problems discussed in this Report strongly suggest that another wholesale reordering of responsibilities is not the best way to address the OCC's challenges at this time.

In addition, DC Appleseed recommends that the OCC streamline its work within each division. DC Appleseed is aware that, in Phase Two of its Reengineering, the OCC is developing data regarding the workloads of its attorneys and support staff, as well as conducting process mapping and the reorganization of individual positions. Regardless of other changes these data and processes suggest, DC Appleseed recommends that the OCC flatten its organizational structure in order to increase decision-making ability and to release more resources for supporting line attorneys. Which specific positions should be eliminated, and how the structure should be flattened, is unclear. The current Corporation Counsel added the new Senior Deputies to reduce the Corporation Counsel's unwieldy span of control, as well as to fulfill some of the more "political" functions of the Division Deputies, such as attending meetings and acting as liaisons with other District agencies.<sup>98</sup> These goals are far from unreasonable, and the Senior Deputy positions may be an appropriate way to fulfill them. However, if the Senior Deputy positions are retained, other management layers should be eliminated to flatten the structure.<sup>99</sup> And, if management layers are eliminated, it may be necessary to consolidate or otherwise reorganize divisions in order to ensure that managers have manageable spans of control.

## VI. CONCLUSION

The need to reform the operations of the Office of the Corporation Counsel is apparent from the facts described in this Report, from the critical perceptions of the Office among judges and practitioners who deal with it regularly, and from statements of other persons inside and outside the Office who were interviewed in preparation of this Report. The reforms this Report recommends are designed to increase the efficiency and professionalism of the Office in providing legal services to the District. All of the recommendations are attainable within the present broad structure of the Office of the Corporation Counsel without the need for any massive reorganization. Certain reforms, such as the increased attorney salaries and the implementation of a case management system, will, however, require new expenditures. In the end, failure to ameliorate the shortcomings detailed in this Report, regardless of the measures used to address them, will mean that the OCC will, at best, continue to limp along in its unsatisfactory state or will deteriorate further. This, the residents of the District can not afford.

---

<sup>98</sup> Conversation with Robert R. Rigsby and Chere Calloway, July 25, 2000.

<sup>99</sup> We note that if the average Section Chief supervises nine line attorneys, and the average Deputy Corporation Counsel supervises nine Section Chiefs – a reasonable span of control – four Deputies could supervise OCC's nearly 300 lawyers. But if a narrower span of control is appropriate, we believe it will be better achieved by adding additional Deputies than by adding another layer of supervision.

## **BIBLIOGRAPHY**

### **OCC Office Orders, Reports and Internal Documents**

Office of the Corporation Counsel Assessment and Realignment Plan (February 1, 1993).

OCC Office Order 1-96, "Realignment of the Office of the Corporation Counsel to create the Executive Deputy Corporation Counsel position and the Government Operations Division; to restructure the Enforcement Division; to rename the Legislation and Opinions Section; and to abolish the Legal Counsel Division, Economic Development Division, Economic Regulations Division, and Regulatory Affairs Section." (January 23, 1996).

"Reorganizational Plan No. 1 of 1998 for the Office of the Corporation Counsel and the Department of Human Services" (January 1998).

OCC Office Order 8-98, "Organizational Order to Create a Management Division, Appoint Carmela A. Cowgill Deputy for Management, and Appoint Victoria Syphax Assistant Deputy for Management." (May 4, 1998).

OCC Office Order 9-98, "Organizational Order to Create a Legal Counsel Division and to Designate Wayne Witkowski Deputy Corporation Counsel, Legal Counsel Division." (May 8, 1998).

OCC Office Order 11-98, "Realignment of the Special Litigation Division into two sections and Appointment of Section Chiefs." (May 13, 1998).

Office of the Corporation Counsel FY 1998 Annual Report (December 1998).

OCC Office Order 34-99, "Relationship between Corporation Counsel, Subordinate Agency General Counsels and Subordinate Agency Legal Staff Under the Legal Service Establishment Act of 1998," with attached "Guidelines Outlining the Duties and Responsibilities of Agency General Counsel and Agency Legal Staff with Respect to Litigation Support." (October 1, 1999).

OCC Office Order 38-99, "Revised Office Policy for the Signing of Pleadings and Other Documents for Filing in Courts and Before Administrative Bodies." (November 1, 1999).

Memorandum from Martin L. Grossman to Robert R. Rigsby, "FY 1999 Annual Statistical Report for General Litigation Division" (November 19, 1999).

District of Columbia Office of the Corporation Counsel Strategic Plan, Draft and attached Appendix (May 5, 2000).

Memorandum from Sara Gold to Robert R. Rigsby, Arabella Wattles Teal, Sharon Styles-Anderson, Chere Calloway, Patricia Kuhn, Victoria Syphax, and Ingrid Jackson (May 12, 2000).

“Report on Compliance with the Legal Service Act,” memorandum from Robert R. Rigsby, Corporation Counsel, to Anthony A. Williams, Mayor (May 31, 2000).

OCC “Reengineering News,” (June 1, 2000).

OCC Training Opportunities, April 1998 to September 1999 (June 5, 2000).

OCC Office Order 14-00, concerning Office realignment, creation of Senior Deputy Corporation Counsel positions, and appointment of agency General Counsel (June 23, 2000).

OCC, Attorney Work Plan and Performance Appraisal form (FY 2000).

OCC, Instructions for Conducting Attorney Performance Appraisals (FY 2000).

D.C. Report of Performance Rating form (used for non-attorney staff and supervisors) (FY 2000).

Office of the Corporation Counsel Individual Accountability Plan (FY 2001).

OCC, Guidelines for Individual Accountability Plans (FY 2001).

OCC, “Performance Evaluation Process For Attorneys and MSS (Management Supervisory Service) Employees,” (October 23, 2000).

### **External Report**

“Report on the Fiscal Year 2001 (FY 2001) Budget Request for the Agencies under the Purview of the Committee of the Judiciary,” Council of the District of Columbia. (April 19, 2000).

### **Book**

Ostroff, Frank, *The Horizontal Organization*. Oxford University Press, 1999.

### **Court Documents and Cases Cited**

*Barton-Smith v. District of Columbia*, No. Civ. A. 98-3026 PLF, 1999 WL 1442343, at \*1 (D.D.C. June 1, 1999) (Friedman, J.).

*Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 52 (D.D.C. 1999) (Friedman, J.).

*Blackman v. District of Columbia*, Civil Action No. 97-1629 (PLF), slip op. at 1 (D.D.C. May 18, 2000) (Friedman, J.).

*District of Columbia Hospital Association v. District of Columbia*, 73 F. Supp. 2d 8, 16-17 (D.D.C. 1999) (Sporkin, J.).

*LaShawn v. Williams*, No. Civ. A. 89-1754 (TFH), Order of September 23, 1999 (D.D.C. 1999) (Hogan, T.).

*LaShawn A. v. Williams*, No. Civ. A. 89-1754 (TFH), Defendants' Memorandum Documenting Violations of Federal and Local Rules and Court Orders Pursuant to the Court's Orders Dated September 23, 1999 and November 3, 1999 (D.D.C. December 10, 1999) (Hogan, T.).

*Shifrin v. Wilson*, 412 F. Supp. 1282, 1302 n.23 (D.D.C. 1976).

*Webb v. District of Columbia*, 189 F.R.D. 180, 186 (D.C.C. 1999) (Lamberth, J.).

*Whatley v. District of Columbia*, Civil Action No. 98-2961 (PLF/JMF), slip op. at 2-3 (D.D.C. August 7, 2000) (Facciola, M.J.).

### **District of Columbia Laws and Regulations**

D.C. Code Ann. § 1-361 (1981).

D.C. Code Ann. §§ 1-609.51-.62 (1999).

Chapter 36, "Legal Service," D.C. Personnel Regulations (as of September 2000).

### **City and County Laws, Regulations, and Forms**

City and County of Denver Charter §§ A10.1, A10.2, A10.3, A10.4, A10.5 (2000).

City of Cincinnati, Civil Service Rule 8, Appointment to the Classified Service; and Rule 17, Appeal to the Commission, Hearings and Commission Action (as of October 2000).

City of Phoenix Performance Achievement Program, Performance Achievement Evaluation, Evaluation Data Worksheet, Supervisory Evaluation, and Management Evaluation forms (as of April 2000).

Metropolitan Government of Nashville and Davidson County Employee Performance Evaluation (as of May 2000).

### **Correspondence**

Letter from David M. Rubenstein to The Honorable Anthony Williams (December 1, 1999).

Letter from Robert Rigsby to The Hon. Ricardo Urbina (December 21, 1999).

Letters from Robert Rigsby to all judges of the U.S. District Court for the District of Columbia and D.C. Superior Court (January 4, 2000) (representative copies).

Letter from Eric P. Gallun and Kristi A. Kenniston to The Honorable Anthony Williams (February 9, 2000).

Letter from Robert R. Rigsby to Joshua S. Wyner (June 5, 2000).

Letter from Robert R. Rigsby to Joshua S. Wyner (October 30, 2000).

Letter from Robert R. Rigsby to Joshua S. Wyner (November 2, 2000).

### **Media Articles**

“Appointments Rile D.C. Legal Office,” *The Washington Post* (October 2, 2000) at B03.

“A Civilian Army,” *Legal Times* (July 17, 2000) at 4.

“D.C. to Drop \$20 Million Payroll System,” *The Washington Post* (August 23, 2000) at B01.

“Developing Patterns,” *Infoworld* (February 3, 1997).

*Information Week* (June 20, 1994).

“Missing Checks in District Blamed on Shoddy Paperwork,” *The Washington Post* (July 30, 2000) at C04.

### **Websites**

Center for Excellence in Municipal Management, <http://209.9.224.230/www.teachingleaders.org/>

*Money Magazine*, “The Best Places to Live 2000,”  
[http://www.money.com/money/depts/real\\_estate/bestplaces/](http://www.money.com/money/depts/real_estate/bestplaces/)

U.S. Office of Personnel Management, section discussing Intergovernmental Personnel Act,  
<http://www.opm.gov/programs/ipa/index.htm/>