



City Attorney Briefs

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Newsletter of the San Diego City Attorney's Office

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Newsletter Highlights

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CITY ATTORNEY'S OFFICE PREVAILS IN SUNROAD LAWSUIT

The City Attorney's Office has succeeded in obtaining a summary judgment ruling in the City's favor in the Sunroad lawsuit. Judge Timothy Taylor's ruling rejects Sunroad Centrum, L.P.'s \$40 million claim, concluding that Sunroad had no vested property right in the two floors that were removed, and is not exempt from the Federal Aviation's Administration safety regulations of the 160-foot height limit.

Since 2006, the City of San Diego has been defended by outside counsel. Earlier this year, the case was reclaimed by the City Attorney's Office, saving the City more than \$1.2 million in anticipated legal fees.

The City Attorney's Office is proud of its litigation team headed by Deputy City Attorneys Carmen Brock, Don Worley and Sheila Ferguson of the Civil Litigation Division.



CITY ATTORNEY'S OFFICE SAVES CITY MORE THAN \$1.3 MILLION DOLLARS

Deputy City Attorney Walter Chung guided the effort that led the City to prevail in the *McGuigan v. City of San Diego* pension-related case. Originally this case was handled by outside counsel. The City Attorney's Office took back the case in March and that action saved the city between \$600,000 and \$800,000 in outside counsel attorney fees.

Upon reclaiming the case, Deputy City Attorney Chung defended the City's efforts to recover \$657,972.88.

After hard-fought litigation over the claim, the court found in favor of the City.

Deputy City Attorney Chung's good work saved the City more than \$1.3 million total.

Taking Back Outside Counsel Cases

By: Jan Goldsmith

When we began rebuilding the City Attorney's Office on December 8, 2008, the City was paying one outside law firm agreed-upon hourly rates as high as \$750. Today, that high rate has been reduced to \$565 per hour, the law firm has written down some \$2 million in fees, and the City Attorney's Office has reclaimed legal work that would have been sent to outside counsel.

During the past several years, the City of San Diego has spent considerable amounts of money on outside counsel. Some of the costs can now be avoided.

There is a role for outside private law firms assisting the City in cases where it is impossible or impracticable for the City Attorney's Office to act as the City's lawyers. These are situations involving conflicts of interests or special areas of practice. For example, outside counsel will often be relied upon for special expertise in legal matters related to securities and labor law.

Although we will not eliminate the need for outside private lawyers, we are reducing reliance

on outside law firms and their costs. We have developed a five-point attack to this problem:

1. Renegotiated hourly rates for outside lawyers, which now range from \$200 per hour to \$565 per hour.
2. Negotiated and reduced over \$2 million in write-downs by outside private lawyers.
3. Took back in house at the City Attorney's Office some high-expense cases such as the Sunroad dispute and a key case in the pension litigation, saving the City over \$2 million in legal fees. Through the good

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COMMUNITY OUTREACH

2008 Outstanding Prosecutor
of the Year!

Deputy City Attorney Michelle Garland was recognized by MADD San Diego County as 2008 Outstanding Prosecutor of the Year. Michelle was presented with the award at the 2009 Annual Recognition Luncheon on April 2nd at the Del Mar Hilton.

MADD began working with Michelle when she became Head Deputy City Attorney for the Case Issuance Unit (formerly Screening & Arraignment). She understands that misdemeanor DUI offenders are a threat to our roadways and their potential for serious felony collisions can be decreased if prosecuted appropriately at the misdemeanor level. Michelle assists MADD with court case information and court dates and works with it on victim updates.

Michelle has been with the City Attorney's Office since 2002. She graduated from Pepperdine University School of Law in 2001 and earned her LLM from Georgetown University Law Center in International and Comparative Law.

Congratulations Michelle! Thank you for your support and community leadership.

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work of Deputy City Attorney Walter Chung, our office won one of the cases within 90 days of taking it back, saving the City another \$658,000 (see separate article).

Through the good work of Deputies Don Worley, Carmen Brock, Sheila Ferguson and their litigation team, our office successfully defended the \$40 million claim on the Sunroad case after taking it back from outside counsel (see separate article).

4. We have been more selective in sending new matters to outside counsel. Lawsuits that in the past would have been sent out are being handled in-house. Our policy is to retain outside counsel only when necessary.
5. We have entered into a Memorandum of Understanding with the County of San Diego to swap lawyers on selected cases in lieu of hiring outside private lawyers. This will save the City taxpayers twice—once as City taxpayers and, again as County taxpayers (see separate article).

As we are handling this additional work, our office has cut \$1.6 million from its budget since December 8 in order to address the deficit we inherited. I am proud of our lawyers and office staff for their dedication.

These are tough financial times for everyone. Cutting budgets and saving money is tough. The job will never get done through rhetoric or by complaining. It requires substance and effort. It requires new ideas and a commitment. We at the City Attorney's Office are doing our best.

Our Workers' Compensation Unit

The Workers' Compensation Unit—part of the Civil Litigation Division—represents the City before the Workers' Compensation Board. Our unit consists of four attorneys plus support staff. Chief Deputy Diana Adams and Deputies Linda Godinez, Catherine Turner and Michael Herrin each handle over 290 cases at any one time—a very heavy caseload in this field.

We believe that employees with legitimate claims should be compensated in accordance with the law. But, we will vigorously defend the City against improper claims. Our lawyers save the City millions of dollars annually. Recently, for example, Deputy City Attorney Catherine Turner won a case that saved the City over \$158,000 after demonstrating that the claimant's unfortunate health conditions would have occurred notwithstanding occupational stress.

It is our job to enforce the law, whether it be a criminal statute, local ordinance or workers' compensation laws. We thank our Workers' Compensation Unit for its good work.

Workplace Violence Injunctive Relief

Most people think of temporary restraining orders (TROs) and injunctions in their usual context in civil law, but may not know they are also used in the employment context. The City can seek such relief on behalf of its employees who are victims of unlawful violence or threatened with a credible threat of violence. California Code of Civil Procedure section 527.8 enables the City, as an employer, to seek injunctive relief to enjoin anyone — whether another employee or a member of the public — from committing acts of unlawful violence against or making continuing threats of violence to its employees.

If a City department believes an employee is facing threatening behavior, it can contact the Labor & Employment Unit of the City Attorney's Office for assistance. A deputy city attorney and paralegal will obtain evidence, speak with the victim(s) and any other witnesses, and determine whether the threatening behavior is actionable.

Actionable, threatening behavior typically is defined as a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family. If our legal team determines that actionable, threatening behavior has occurred, the City Attorney will seek to enjoin it. The City Attorney's Office will file papers seeking a temporary restraining order that can be issued that day on an *ex parte* basis, i.e., without prior notice to the party to be restrained. If a judge is satisfied that the City has made its required showing, the judge will issue a temporary restraining order. Once the TRO is issued, a defendant will be prohibited from being within a certain distance of the protected employees, and restricted from activities such as assaulting, battering, stalking, following, or e-mailing the designated protected persons. Under the terms of a TRO, a defendant also must surrender or sell any firearms he or she possesses.

A restraining order is temporary, in effect up to 15 days until another hearing can be conducted, at which time the defendant may respond and rebut the City's evidence. This second hearing is called an "Order to Show Cause," as it allows a defendant to contest why the temporary restraining order should not become a permanent injunction in effect for up to three years. If the defendant does not meet that burden, the injunction issues and is disseminated to all protected employees, their departments and their employment facilities. The County Sheriff also enters the injunction into the law enforcement data base. The City can later decide if a need exists to seek an extension of the injunction beyond three years.

Employees of the City's Park & Recreation, Library and Fire departments have been most affected by threatening conduct from members of the public, according to Deputy City Attorney William Gersten. During the last four years, according to Gersten, the City has routinely been successful in stopping violent acts or credible threats of violence, whether by obtaining injunctive relief or securing a written agreement whereby the offending party agrees to stop the offending behavior and comply with other conditions to prevent any future similar offending conduct.



City, County agree to swap attorneys

Reprinted from the San Diego Daily Transcript, May 4, 2009



City Attorney Jan Goldsmith

The City of San Diego and the County of San Diego will occasionally swap lawyers under a proposal approved by both the city council and board of supervisors.

The proposal brought forward jointly by San Diego City Attorney Jan Goldsmith and County Counsel John Sansone is designed to help both entities save money on hiring of outside counsel.

"When it is necessary under the law to hire outside lawyers, it sure is nice to have the option of using County Counsel's office rather than spending \$400 per hour on private law firms," Goldsmith said. "We will take it slow, but it will save taxpayers money on both the city and county levels. And, all of our city taxpayers are also county taxpayers."

Under the proposal, the two offices will keep track of hours and balance them out on an annual basis rather than submit invoices.

The county board of supervisors approved the memorandum of understanding and cross-representation agreement at their board meeting on April 21. The city council approved the proposal Monday.

"We applaud County Counsel John Sansone and City Attorney Jan Goldsmith for their collaborative efforts," said County Board of Supervisor Greg Cox. "This makes a lot of sense and will save a lot of money. This is what government should be about."

Dianne Jacobs, Chairwoman of the County Board of Supervisors, agreed.

"I join my colleagues in thanking County Counsel John Sansone and City Attorney Jan Goldsmith for putting together this agreement," she said. "This new partnership will allow for shared use of experienced attorneys in each of the offices. This is really a good deal for taxpayers."

The term of the agreement is for five years from the effective date and can be terminated on either side with 10 days notice. Legal services are limited to matters where the interests of the city and county do not conflict.

Newsletter of the San Diego City Attorney's Office

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Welcome Deputy City Attorney Mark Deniz

Please welcome Deputy City Attorney Mark Deniz to the City Attorney's Office. Mark will be working in the General Trial Unit of the Criminal Division. Mark has had extensive experience prosecuting both misdemeanors and felonies. Most recently, Mark was Deputy District Attorney in Tulare County serving as Auto Theft Prosecutor. Prior to the DA's office, Mark worked for Contra Costa Senior Legal Services specializing in elder abuse and landlord and tenant cases.

Criminal Trial Deputies handle jury and bench trials, probation revocation hearings, restitution hearings, as well as cover the arraignment and trial setting departments. Our deputies handle complex, sensitive cases, and see these through from beginning to end.

Before entering law school, Mark was a high school teacher and football coach at AB Miller High School in Fontana, California. Mark is married to Stacey Nuveman, an Assistant Softball Coach with San Diego State University and three-time U.S. Olympian. They have one son, age two.



Meet Deputy City Attorney Walter Chung, Civil Litigation Division



Walter started his career in the City Attorney's Office in August 2006 in the Civil Litigation Division. An expert litigator in pension and securities, Deputy City Attorney Chung recently defended the City against plaintiffs' efforts to recover attorney's fees in the *McGuigan v. City of San Diego* pension-related case, saving the city more than \$1.3 million.

Walter graduated from California Western School of Law with a J.D. in 1992 and Fordham University School of Law in 1993 with an LLM in Banking, Corporate and Finance Law. He is admitted to the bar in California, the District of Columbia, and Florida.

After law school, Walter litigated multi-million-dollar class action securities fraud on behalf of plaintiffs for approximately three years, followed by working as in-house counsel for a local technology company involved in the music and computer industry for seven years.

He took a year off and moved to Taipei, Taiwan to improve his Mandarin Chinese language ability. In doing so, he met his wife in Taiwan.

After returning to the States, Walter worked as in-house counsel handling litigation matters for a commercial financing company before joining the City Attorney's Office.

Walter and his wife enjoy snowboarding, SCUBA diving and mountain biking. Walter is also an avid golfer. He serves as President of the San Diego Taiwanese American Professionals Organization in addition to being President of his Homeowners' Association. He is also on the Board of Directors of the Taiwanese American Foundation of San Diego.