



City Attorney Jan Goldsmith

# City Attorney Briefs

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## Newsletter of the San Diego City Attorney's Office

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### The City Attorney's Office: A Year In Review

By: Jan Goldsmith

I appreciate the opportunity to have served as City Attorney during the past year. Our office is making progress on our goal to become one of the finest municipal law firms in the nation, helping our City through tough times and a wide variety of lingering legal issues.

Our office is among the region's largest law firms, with 320 employees, including 137 attorneys. We advise the City and all its departments, defend the City in court and prosecute some 40,000 criminal cases. No law office in California handles a more diverse case load.

We faced some challenges when I assumed office in December, 2008. We needed to earn credibility and achieve an attorney-client relationship while rebuilding the office and correcting a \$1.8 million mid-fiscal year budget deficit we inherited.

We developed a five-point plan for 2009:

- 1. Tone down the public volume coming from the City Attorney's Office. Set a professional and ethical standard. Good legal work is often out of the public eye.**

Practicing law in a fishbowl is challenging. The City Attorney must balance two sometimes competing responsibilities — accessibility to the media and public on the one hand and the need for quiet strategy and legal advice to the client on the other.

In 2009, we dispelled the myth that the City Attorney's Office should be a media center. Generally, we

focused on rebuilding the office and providing quality legal work— both behind the scenes and in public, where appropriate. We were responsive to the media to the extent permitted by ethical obligations. I appreciate that most members of the media understood our role as lawyers.

In 2010, our office will be involved in some high-profile issues such as managed competition and pension matters. We will always be aware of our sometimes competing responsibilities and try to make the right choices.

- 2. Begin to rebuild the office into a quality law firm.**

In 2009, we restructured the office into a private law firm model, with four divisions: Advisory, Civil Litigation, Criminal, and Community Justice. These divisions- subdivided into sections and units- allow our lawyers to specialize in areas of practice. A more complete discussion of our restructured office is discussed on our web site: <http://www.sandiego.gov/cityattorney/>

Our four division leaders and I have more than 130 years of experience and serve on the executive committee, along with three non-lawyers. Our office is built upon the senior partner, junior partner and associate model used in private law firms. We have developed good communication and team support, regular training programs and quality control processes patterned after those used at the best private law firms. Each of our divisions has instituted changes that provide better and more efficient legal services.

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**Children's Pool Ruling:  
2005 Order Against the City  
Vacated**

**Congratulations to Deputy  
City Attorney George Schaefer  
for vacating the court's  
injunction to continue  
dredging for a Children's  
Pool in the La Jolla seals  
case!**

**In February our office recommended that the City of San Diego sponsor legislation to change the terms of the trust to give the City Council and Mayor the discretion to decide how the beach would be used. The legislation passed and takes effect in January 2010.**

**This is a huge victory for the City and hopefully will end the case and the bleeding of money caused by it.**

**DCA Schaefer did an outstanding job in his arguments. His work on this case has spanned over 3 years.**

# The Role of the City Attorney's Office Law Library

By Deirdre Anderson, Law Librarian

The City Attorney's Office Law Library serves both the criminal and civil divisions. It provides the necessary legal authority for the attorneys in our office to practice law, as well as providing the tools for staff to conduct legal research.

Managing the responsibilities of a Law Library can be challenging. Typical library tasks include collection development, evaluating and acquiring library materials, and maintaining the library budget. In addition, law librarians must ensure that all legal publications are current and updated, assist staff with legal and historical research and be experts in database searching.



Costs for electronic databases have skyrocketed in recent years. Private firms can easily pay a million dollars a year or more for access to electronic materials. A recent study showed that the average cost of library services in a large private firm add up to approximately ten thousand dollars per attorney per year. By balancing the collection of print materials with electronic services, the City Attorney Law Library provides comparable services at a fraction of those costs.

We welcome student volunteers from Library and Information Science, paralegal and law school programs. In the last fiscal year, volunteers logged over 900 hours of time in the City Attorney Law Library. Volunteers perform a variety of jobs in the library including cataloging books, organizing materials and helping with research. They are currently assisting in the indexing of our City Attorney Legal Opinions.



## Our Cost Savings Plan

Our City, like many, is facing a significant budget deficit and we have responded:

\*Since December 2008, we have reduced the number of employees within the office by approximately 10%. In addition, 25% of our attorneys are now funded by non-general fund sources.

\*When taking office in December, 2008, the inherited budget deficit projection was \$1.8 million for FY 2009. Our office cut costs to bring the department into budget through FY 2009 and continued those savings through FY 2010.

\*We plan to shift \$5 million in expenses from the General Fund budget to special funds that do not rely on the City's General Fund.

\*We have saved \$729,240 to date through maintaining open vacancies and will only fill positions that are necessary in order to provide quality legal work.

\*We will begin saving \$217,000 annually in rent by consolidating offices and moving attorneys from the Family Justice Center to Civic Center Plaza. This will not impact our service or commitment. We will still be there for the victims and hold perpetrators accountable. We will continue to maintain desk space; however, all operations of the Domestic Violence Unit will be housed with the balance of our office.

\* We are bringing cases back in house from outside counsel, such as the \$40 million Sunroad case, and continuing our efforts to limit the use of outside counsel.

The office will continue to look for ways to cut costs without impairing our ability to deliver quality legal work as mandated by Charter section 40.



### **3. Develop attorney-client relationship**

Our goal is preventative law. A good attorney-client relationship is critical because legal advice is only effective if the client follows it.

The City Attorney's Office represents the City of San Diego, including all of its departments, the City Council and Mayor. Our lawyers have developed a solid attorney-client relationship with each, working hard to provide independent legal advice uncluttered by politics.

One of our Advisory Division units, for example, provided educational programs on process, open meeting laws and public "sunshine" laws for new council members that helped develop relationships and interaction on legal issues. Mayoral departments and attorneys advising them have developed close working relationships.

Most importantly, our client has been receptive to independent legal advice. We have found our client intent on following the law and willing to take action to correct legal problems.

In 2010, our lawyers will not waiver from our commitment to provide sound legal work on the basis of the law and not politics.

### **4. Litigation success**

In 2009, our Civil Litigation Division implemented a policy that every lawsuit should have a strategy to achieve specific client goals. We do not litigate for any other reason. To the extent we do litigate, we implemented a "team" approach comparable to larger law firms.

Our commitment to strategy paid off with successes. Examples include the following:

**Sunroad:** This is a \$40 million lawsuit against the City filed in 2007. Outside counsel had been representing the City. More than \$1 million in legal fees had already been paid and the case had been scheduled for a big trial that would have cost our City millions more. Our Real Estate Litigation Unit developed a strategy to bring the case back to our office from outside counsel and seek a summary judgment. We did that and won the case prior to trial.

**Seals:** In December 2008, the City faced a state court order to remove the seals and reconfigure the beach. The City also faced a federal court order prohibiting any action to remove the seals. The City had already been ordered to pay opposing counsel's legal fees of \$1 million. Our office developed a strategy of seeking state legislation to change the trust being administered by the City to permit City Council discretion regarding the use of the beach. Once the legislation was enacted, the court orders were vacated.

**Pension cases:** In 2009, the City achieved some success in pension litigation. Departing from the past, our office focused on enforcing the terms of our City Charter in determining the scope of pension rights. After all, those pension rights are granted in our Charter. As a result, two courts upheld the City's legal positions. Courts have now held that while legitimately vested benefits cannot be unwound, benefits granted without complying with Charter requirements are void.

Our ultimate goal is to resolve all pension-related litigation.

### **5. Balance our budget, then cut the budget**

Our office did "heavy lifting" on budget cutting in December 2008 and January 2009. As a result, the \$1.8 million mid-year budget deficit we faced in December was eliminated within 90 days. We ended the fiscal year with a balanced budget, with 10% fewer lawyers and 10% fewer non-lawyers, while reducing outside counsel.

We have since reduced our 2010 budget by \$1.5 million and have implemented a plan to save the City's General Fund \$7 million. We will continue to do our very best to provide quality legal work at a reasonable cost.

In conclusion, we understand our role and are committed to providing quality independent legal work. Although we represent the City of San Diego, we will never forget that we are accountable to the people of San Diego.



## Felony Prosecution

The City Attorney's Office is pleased to announce that Deputy City Attorney Joan McNamara has filed the first felony case by a deputy city attorney under a new joint program with the District Attorney's Office. She is a cross-designated Deputy District Attorney, enabling her to prosecute higher-end criminal cases. This will provide us with a tool to better coordinate with law enforcement and coordinate with the District Attorney's Office.

## Prostitution Impact Panel Makes Impact

The Office of the City Attorney and its law enforcement and community partners spend significant time and resources addressing prostitution and the impact this crime has on neighborhoods. One joint project is the Prostitution Impact Panel (P.I.P.). P.I.P. is a sentencing alternative for "john" offenders. These male offenders who choose to attend P.I.P. are addressed by panels of community members, former prostitutes, a former sex addict/john, a social service worker, police officer and health worker. These panelists discuss the impact that prostitution has had on their lives and on the population they serve or represent. They illustrate the principle that prostitution is not a victimless crime by exposing "johns" to a variety of perspectives they did not consider when they were offending.

The City Attorney's Office completed a comprehensive recidivism study of P.I.P. The study concludes that out of the 571 offenders who have participated in the program over the past seven years, only 2.3% (thirteen people) have re-offended with the same or similar conduct. The successful results will be useful in coordinating future community involvement against prostitution.

## City Attorney's Office to take on Managed Competition

A Charter Amendment providing for Managed Competition (Proposition C) was approved by voters in 2006, but has yet to get off the ground due to labor negotiations and legal issues. Earlier this year, our office issued a legal opinion setting forth a simplified process for implementing Proposition C. Our opinion can be found under Legal Opinions (2009) on our website: <http://www.sandiego.gov/city-clerk/officialdocs/legaldocs/previouslegalops.shtml>

Since early 2008, the City had retained outside legal counsel to lead negotiations on Managed Competition. Recently, the outside legal counsel was terminated and the City Attorney's Office has been asked to assume the lead. We are committed to negotiating a process that will achieve voters' intent when they adopted Proposition C in 2006.

## City Attorney's Office Welcomes New Associate Attorneys

Under our deferred program, the Civil Litigation and Civil Advisory Divisions welcome new associate attorneys who have been hired by law firms but have been given deferred start dates. Many receive a monthly stipend to perform public service or other volunteer work.

Deferred Associates complete research and writing assignments in a variety of practice areas including Municipal Law, Land Use, Litigation, Contracts, Civil Rights, Labor & Employment, Public Works and Utilities or assist deputies in the Trial Unit.



## Meet Deputy City Attorney Kendall Berkey, Redevelopment Unit

Kendall was eager to relocate to San Diego from the hot Palm Springs area and accepted a position in the Redevelopment Unit of the City Attorney's Office in December 2006. She has been practicing law since 1995.

As a supervisor, she has the primary responsibility of providing legal advice and services to the Redevelopment Agency of the City of San Diego. The work involves many projects including negotiating and preparing a variety of agreements for the development of mixed use, affordable housing and public works projects, and the rehabilitation of housing and commercial projects. The Redevelopment Unit also coordinates and assists the City on various community-wide planning efforts. The unit provides legal advice to the redevelopment Project Area Committees and conducts training sessions on the Ralph M. Brown Act, ethics, conflicts of interest, and the impact of new legislation.

Kendall enjoys the diversity of projects that her Unit assists and the applicability of various areas of law to such projects. She feels fortunate to have the opportunity and privilege to work with such a great group of professional colleagues in the City Attorney's Office, the Redevelopment Agency and the City.

Prior to joining the City Attorney's Office, Kendall was a senior associate for the law firm of Green, de Bortnowsky & Quintanilla, LLP, specializing in municipal, public, and redevelopment law and serving as Assistant City Attorney, Assistant General Counsel and City Prosecutor for several of the firm's clients.

She is licensed to practice law in California, Florida, Connecticut, and the U.S. District Court, Southern District. Additionally, she was recently sworn in as a member of the Bar of the United States Supreme Court, where she had a private tour of the Supreme Court and personally met with Associate Justice Antonin Scalia in his chambers.

When not working, Kendall enjoys hiking with her Dalmatian Calvin, horseback riding with friends of the California Cowboy Lawyers Association, and boating and fishing with her boyfriend, Mark.