REPORT OF THE FINANCE SUBCOMMITTEE ON LITIGATION

October 1, 2013

The Honorable,
The Board of Commissioners of Cook County

Ladies and Gentlemen,

Your Finance Subcommittee on Litigation of the Board of Commissioners met pursuant to notice on Tuesday, October 1, 2013 at 11:00 a.m. in the County Building, Room 569, Chicago, Illinois.

SECTION 1

ATTENDANCE:

Present:	Chairman Silvestri, Vice Chairman Fritchey and Commissioners Collins, Schneider, Silvestri and Tobolski (6)
Absent:	Commissioner Gainer (1)
Also Present:	Commissioners Garcia, Reyes and Steele; Laura Lechowicz Felicione – Special Legal Counsel to the President; Patrick Driscoll, Jr. – Deputy State's Attorney and Chief, Civil Actions Bureau; James Pullos – Assistant State's Attorney; Nicholas Scouffas – Assistant General Counsel for the Office of the Sheriff; Robert T. Shannon – Attorney at Law, Hinshaw & Culbertson LLP
Court Reporter:	Anthony W. Lisanti, C.S.R.

Commissioner Suffredin, seconded by Commissioner Schneider, moved to Receive and File the Litigation Subcommittee Status Report. The motion carried.

Vice Chairman Fritchey, seconded by Commissioner Schneider, moved to enter into Executive Session. The motion carried.

Commissioner Suffredin, seconded by Vice Chairman Fritchey, moved to return to Regular Session. The motion carried.

Commissioner Collins, seconded by Commissioner Vice Chairman Fritchey, moved to enter into Executive Session. The motion carried.

Commissioner Suffredin, seconded by Commissioner Schneider, moved to return to Regular Session. The motion carried.

Commissioner Suffredin, seconded by Vice Chairman Fritchey, moved to Concur with the Recommendation of the State's Attorney's Office in the matter of *FJ Kerrigan v. JSL Masonry,* Case No. 11 CH 21812. The motion carried.

Commissioner Suffredin, seconded by Commissioner Schneider, moved to Concur with the Recommendation of the State's Attorney's Office in the matter of *William Burruss, et al. v. Sheriff*, Case No. 08 C 6621. The motion carried.

Commissioner Suffredin seconded by Commissioner Schneider, moved to Receive and File the status update in the matter of *Michael Shakman, et al. v. Cook County,* Case No. 69 C 2145. The motion carried.

COMMUNICATION NUMBER 324536

SUBSTITUTE PROPOSED ORDINANCE

Sponsored by

PETER SILVESTERI AND LARRY SUFFREDIN, COUNTY COMMISSIONERS

AN ORDINANCE ESTABLISHING GUIDELINES FOR SPECIAL STATE'S ATTORNEYS ~~AND OTHER CONTRACT ATTORNEYS~~

NOW THEREFORE BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 2 Administration, Article IV, Officers and Employees, Division 9, State's Attorney, Subdivision 2, Cook County Guidelines for Special State's Attorneys ~~or Other Contract Attorneys~~, Section 2-331-336 of the Cook County Code, is hereby enacted as follows:

Subdivision 2. Cook County Guidelines for Special State's Attorneys ~~and Other Contract Attorneys.~~

Section 2-331.

a) *Short Title.* This subdivision shall be known and may be cited as the Cook County Guidelines for Special State's Attorneys ~~and Other Contract Attorneys.~~

b) *Purpose.* In the event that the Cook County State's Attorney is sick, absent, unable to attend to a case or has an interest in a case, a Special State's Attorney can be appointed by a court of competent jurisdiction pursuant to 55 ILCS 5/3-9008. The appointment of any Special State's Attorney is considered temporary and limited in scope to the instant matter before the appointing court. ~~In limited circumstances, an attorney may also be retained to represent an elected official of Cook County or a County Office on a limited contractual basis.~~

c) *Definitions.* The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Appointed*~~ *Attorney* is an attorney ~~who has been~~ appointed by a court of competent jurisdiction ~~or appointed by the Cook County State's Attorney,~~ pursuant to 55 ILCS 5/3-9008 and who has fully complied with the Notice Provision contained in Sec. 2-332 of this ordinance.

~~*Contract Attorney* is an attorney who has not been appointed as a Special State's Attorney, but has provided legal services in a non-litigation setting to any elected official of Cook County or Cook County Office pursuant to a valid procurement process under Sec. 34-135 of the Cook County Code.~~

Litigation Subcommittee or *"subcommittee"* means the Finance Subcommittee on Litigation of the Cook County Board of Commissioners.

Chair of the Litigation Subcommittee or "Chair" means the chairperson of the Finance Subcommittee on Litigation of the Cook County Board of Commissioners.

Case Summary means the report prepared by the ~~Appointed or Contract~~ Attorney and submitted to the Litigation Subcommittee that updates the Litigation Subcommittee on the progress and status of the case assigned to the ~~Appointed~~ Attorney ~~or Contract Attorneys.~~

Case Management means the regular documentation of the ~~Appointed or Contract~~ Attorneys' work on an individual case, including but not limited to a Case Budget (if applicable), Case Summary, modifications and Quarterly Status Reports.

Case Budget means the ~~Appointed or Contract Attorneys'~~ estimate of legal fees and expenses through the time of judgment or other completion including costs associated with the use of third-party vendors.

Modification of Approved Case Summary means the required report made within five (5) business days to the Chair of the Litigation Subcommittee of any major deviations to the budget that would significantly expand the planned activities set forth in the Case Summary.

Quarterly Status Reports means the written reports that update the status of the case, made in writing and submitted to the Chair of the Subcommittee on Litigation at least four times annually.

(d) *Applicability*. This Ordinance shall apply to all Attorneys~~:~~ ~~1)~~ appointed as Cook County Special State's Attorneys by a court of competent jurisdiction, pursuant to 55 ILCS 5/3-9008 to represent the county or a county office, officer, board, commission, employee and/or agent.

~~2) who have been appointed Special State's Attorney by the Cook County State's Attorney; or~~

~~32) who provide representation to any elected official of Cook County or County Office in a non-litigation setting pursuant to a valid procurement process under Sec. 34-135 of the Cook County Code.~~

~~(d)~~ (e)All attorneys who represent a Cook County party in multiple litigation matters as an ~~Appointed~~ Attorney~~, Contract Attorneys or both~~ must comply fully with the terms of this ordinance for each separate matter of representation.

(f) No attorney may file an appearance in a lawsuit on behalf of an elected official of Cook County or County Office unless they are appointed as a Special State's Attorney by a court of competent jurisdiction or have been authorized by the Office of the Cook County State's Attorney to file an appearance.

Sec. 2-332. Notice.

~~a) *Appointed Attorneys*.~~ Notices of a motion seeking a Special State's Attorney appointment shall be provided at least forty-eight (48) hours in advance to Cook County; courtesy copies of said Notices and Motions seeking Special State's Attorney appointment shall also be provided at least forty-eight (48) hours in advance of the motion being heard to the Chief of the Civil Actions Bureau, the Chair of the Litigation Subcommittee and the President of the County Board. Within forty-eight (48) hours of appointment by a court of competent jurisdiction, all ~~Appointed~~ Attorneys shall provide written notice to the Chair, the President

of the County Board and the Chief of the Civil Actions Bureau of the Cook County State's Attorney's Office of their appointment by ~~the~~ a ~~C~~court of competent jurisdiction. The Chief of the Civil Actions Bureau shall send a copy of this ordinance to each ~~Appointed~~ Attorney and advise them of the County's request that they comply with the Cook County Guidelines for Special State's Attorneys ~~or other Contract Attorneys~~.

~~b) *Unappointed Attorneys.* Any Attorney who has not been appointed by a court of competent jurisdiction or the State's Attorney, including Contract Attorney, who files an appearance on behalf of a Cook County party must notify the Chair and the Chief of the Civil Actions Bureau of the Cook County State's Attorney's Office within forty-eight (48) hours of filing their appearance. The attorney must include an explanation of why they have filed an appearance in their notice. If an elected official of Cook County or County Office retains a Contract Attorney they shall provide a copy of this ordinance to the Contract Attorney within forty-eight (48) hours of retention.~~

Sec. 2-333. Case Management.

a) *Case Management.* Each ~~Appointed~~ Attorney ~~or Contract Attorney~~ who has filed an appearance on behalf of Cook County:

1) Shall submit a Case Budget and a Case Summary to the County Board through its Litigation Subcommittee within 30 days of their ~~Special State's Attorney's~~ Appointment or as soon thereafter as the Subcommittee meets. This information and other communications between the ~~Appointed~~ Attorney ~~or Contract Attorney~~ and the Board or Subcommittee shall constitute privileged and confidential attorney-client communications, unless there is a conflict of interests in disclosing that information or communication between the represented party and the Cook County Board of Commissioners;

~~2)Shall not commence work on a matter before the subcommittee approves the budget, unless it is necessary to immediately commence their representation to adequately protect the legal interests of their client and that representation shall be limited only to matters that must be addressed in the interim before the next meeting of the Committee~~;

~~3)Shall report to the Chair, any extraordinary expenses that exceed the rate schedule set forth in Section 2-334, within five (5) business days of expenditure;~~

2)~~4)~~Shall include in the Case Summary the major activities anticipated for the successful defense or prosecution of the case. The Case Summary shall also include estimates of potential liability, whether the case is appropriate for settlement, and the assessment of the probable outcome of litigation; and

3)~~5)~~Shall report any modifications or deviations to the initial Case Summary in quarterly reports to the Chair.

b) *Review and Approval of Case Summary and Budget.* The Subcommittee shall review and approve the Case Summary and Budget. The ~~Appointed~~ Attorney ~~or Contract Attorney~~ is not prohibited from initiating legal activities reasonably necessary to adequately protect the legal interests of their client prior to the Committee's approval of the Case Summary and Budget. Special State's Attorneys appointed in criminal matters shall not be required to submit a Case Summary to the Litigation Subcommittee.

~~*c)Expansion of Litigation.* Should the court determine that an expansion of the representation is necessary, the Appointed Attorney or Contract Attorney shall inform the Chair who may provide the court with information on the financial impact of that expansion on the County, pursuant to 55 ILCS 5/3-9008.~~

~~d)~~*c) Estimated Case Budget.* The budget shall include an estimate of legal fees and expenses through the time of judgment or other completion and shall allocate the fees and expenses associated with each phase. Should the court determine that an expansion of the representation is necessary that substantially increases the Case budget, the Attorney shall inform the Chair who may provide the court with information on the financial impact of that expansion on the County, pursuant to 55 ILCS 5/3-9008.

~~e)~~*d)Rejection of Attorneys who have Filed an Appearance on Behalf of Cook County in Federal or Circuit Court without Being Appointed as a Special State's Attorney by a Court ~~or being appointed by the State's Attorney~~.* At any time, the Litigation Subcommittee may reject the representation of any attorney who has not been appointed as a Special State's Attorney ~~or hired as a Contract Attorney~~. Upon rejection, the Litigation Subcommittee may ask the State's Attorney to provide representation or petition the respective court to appoint an appropriate attorney. The Litigation Subcommittee may also reject any Attorney from providing representation if they have failed to comply with the Cook County Guidelines for Special State's Attorneys in previous representations of Cook County parties.

Sec. 2-334. Fees, Expenses, Rates and Fee Petitions

a) *Fees and Expenses.* ~~Both Appointed Attorneys and Contract~~ Attorneys shall be paid reasonable fees and costs based on the type and nature of the case. Such fees and costs shall conform to the fees and costs authorized under this section. The ~~Appointed Attorney and Contract~~ Attorney must pay for all expenses in advance unless otherwise expressly directed by the court or agreed to in writing by the Litigation Subcommittee. Reimbursement of expenses shall be requested as part of ~~both the Appointed Attorney's fee petitions as well as the Contract~~ Attorney's fee petitions. Expenses shall be reimbursed as follows:

1) Photocopying. Reasonable photocopying at actual cost, not to exceed 10 cents per page.

2) Messenger Service. The use of messengers when there is a genuine need for expedited delivery—at actual charges of a third-party vendor or, when an in-house firm messenger is used, at actual cost.

3) Computerized Research. Actual costs of reasonably necessary computerized research services.

4) Experts. The reasonable fees of qualified consulting and testifying experts retained to provide opinions necessary to the defense or prosecution of the litigation.

5) Travel. Air travel expenses must not exceed the highest fare coach rate for the flight. Mileage expenses shall be at the Internal Revenue Service deductible rates. Hotels, car rental companies and airlines offering moderate prices and discounted corporate rates shall be used. ~~Both Appointed and Contract~~ Attorneys shall reduce the hourly rate charged by 50 percent while an attorney or paraprofessional is traveling, unless legal work in being performed and is documented.

b) *General Business Costs*. Law firm overhead expenses including, but not limited to, rent, electricity, supplies, secretarial and support services, computer system expenses, overtime expenses, local telephone service and other similar expenses, shall be considered part of the ~~Appointed and Contract~~ Attorneys' hourly rate.

(c) *Miscellaneous Costs.* ~~Both Appointed and Contract~~ Attorneys shall not seek reimbursement of fees for:

1. preparing a fee petition;
2. conducting a conflicts check;
3. entertainment expenses;
4. excessive staffing;
5. work resulting from ~~Appointed or Contract~~ Attorney error;
6. preparing an estimated case budget.

~~Appointed and Contract~~ Attorneys' appearances and depositions shall, under most circumstances, be based on the work of a single attorney.

(d) *Fee Petitions.* Unless otherwise expressly directed by the court, ~~Appointed Attorneys and Contract~~ Attorneys shall submit fee petitions quarterly. If the accumulated charges for a quarter are less than $500.00, the charges shall be included in the next quarterly fee petition. ~~Appointed and Contract~~ Attorneys shall submit all fee petitions to the Chair in a time appropriate for referral to and review by the Subcommittee prior to filing the fee petition with the court. The time spent performing the chargeable services shall be recorded on a daily basis to the nearest 1/10th of an hour and shall be broken down in detail, describing the work performed by each individual during that time period. The fee petition shall contain the amount charged for each attorney and paraprofessional, including the time, the hourly rate and summary total for each. The fee petition shall itemize expenses according to categories including the following: photocopying, messenger service, computerized research, experts and travel.

(e) *Rate Structure.* Unless otherwise expressly directed by the court or the Subcommittee, ~~Appointed Attorneys and Contract~~ Attorneys shall bill for their services on an hourly basis and in accordance with the Fee Schedule set forth below, as approved and amended from time to time by the Board. The Fee Schedule shall establish the maximum hourly charges payable for the type of service provided. ~~Appointed Attorneys and Contract~~ Attorneys may propose alternative fee structures such as blended, flat or contingent rate upon approval of the subcommittee.

Fee schedule

Partner Hourly Rate	$170.00 - 185.00
Associate Hourly Rate	$140.00 - 155.00
Paralegal/Law Clerk Hourly Rate	$65.00

Sec. 2-335. Litigation resolution

a) *Alternative Dispute Resolution.* If an ~~Appointed~~ Attorney believes that alternative dispute resolution is appropriate to resolve a matter, that ~~Appointed~~ Attorney shall bring a proposal recommending such action to the Litigation Subcommittee for its consideration and approval.

b) *Settlement.* ~~Appointed~~ Attorneys shall communicate all settlement proposals to the Subcommittee in a timely manner. ~~Appointed~~ Attorneys shall provide a written settlement analysis and recommendation to the Litigation Subcommittee and shall be prepared to present that recommendation at a meeting of the Subcommittee.

c) *Permission to Try.* ~~Appointed~~ Attorneys shall obtain the approval of the Litigation Subcommittee prior to taking a matter to trial. When an ~~Appointed~~ Attorney recommends that a civil matter proceed to trial, that attorney shall provide a revised Case Summary and recommendation to the Litigation Subcommittee. That attorney shall be prepared to present that recommendation at a meeting of the Subcommittee. Prior to seeking the authority to bring a matter to trial, Attorneys must present a revised case budget with the estimated cost of the potential trial to the Litigation Subcommittee for approval.

d) *Appeals.* ~~Appointed~~ Attorneys must notify the Chair of any final and appealable ruling in civil matters within seventy-two (72) hours of the ruling. If an appeal may result in the imposition of accrued interest upon the County, the ~~Appointed~~ Attorney must obtain authorization from the Litigation Subcommittee before pursuing the appeal. However, ~~Appointed~~ Attorneys shall take all steps necessary to protect the interests and preserve the appeal rights of the parties they represent pending a decision to appeal, including the filing of appropriate post-trial motions or a notice of appeal when necessary. The decision to appeal must be approved by the Subcommittee on Litigation.

Section 2-336 Conflicts of interest

a) *Modification of Guidelines.* There may be circumstances in which the Cook County Guidelines for Appointment of Special State's Attorneys ~~and Other Contract Attorneys~~ requires modification. The Litigation Subcommittee shall examine these situations on a case-by-case basis and shall modify the Cook County Guidelines for Special State's Attorneys ~~and Other Contract Attorneys~~ accordingly for the course of that representation. In unusual circumstances in which an ~~Appointed Attorney or a Contract~~ Attorney believes that strict compliance with the Cook County Guidelines for Special State's Attorneys ~~and Other Contract Attorneys~~ would interfere with the exercise of their professional judgment or otherwise violate their professional responsibilities, they shall promptly seek appropriate guidance from the court. Pending the receipt of such guidance, they shall be relieved of the obligation to comply with the Cook County

Guidelines for Special State's Attorney ~~and Other Contract Attorneys~~, but only to the extent necessary to avoid the perceived problems that prompted the request for guidance.

b) *Conflicts Check.* Before accepting a court appointment, when applicable, or before rendering any services, ~~Appointed Attorneys and Contract~~ Attorneys must conduct a conflict of interest review and provide the Litigation Subcommittee with a written list of all actual or potential conflicts of interest and matters that may present the appearance of a conflict.

c) *Timely notification.* ~~Appointed Attorneys and the Contract~~ Attorneys must provide the Chair a written notice of any actual or potential conflicts or the appearance of a conflict within five (5) days of learning of the conflict.

d) *Waiver*: ~~Appointed Attorneys and Contract~~ Attorneys must be free of any conflict of interest under the rules of professional conduct unless the conflict is waived by the Litigation Subcommittee and the party represented by the ~~Appointed or Contract~~ Attorney.

Sec. 2-336. Penalties

(a) If an ~~Appointed or Contract~~ Attorney fails to comply with Sections 2-331 through 2-335, the Litigation Subcommittee may delay or deny the payment of any accrued or future fees and costs for the matter of representation.

(b) An attorney who files an appearance without being appointed as a Special State's Attorney by a court ~~or the State's Attorney~~ shall not be paid for any time or costs accrued prior to their appointment ~~until they are duly appointed~~ by a court or the State's Attorney. ~~The Litigation Subcommittee may deny the payment of any accrued fees prior to the appointment.~~

~~(c) Contract Attorneys who fail to comply with the guidelines may be removed from their representation and may be denied the payment of any accrued fees and costs for the matter of representation.~~

Effective date. This ordinance takes effect immediately upon passage.

***Referred to the Finance Subcommittee on Litigation on 07-31-13.**
***Deferred as Substituted at the Finance Subcommittee on Litigation on 09-09-13.**

Commissioner Suffredin seconded by Commissioner Schneider, moved to Approve Communication No. 324536, An Ordinance Establishing Guidelines For Special State's Attorneys, as Substituted. The motion carried.

Commissioner Suffredin, seconded by Vice Chairman Fritchey, moved to authorize invoice payments for special counsels in Tab #1 through Tab #5 in Volume 2 which are in compliance with the County's Attorney-Fee Guidelines. The motion carried.

Tab 1	Rock Fusco & Connelly, LLC Case No. 11 C 4028	*Capra v. Cook County, et al.*
Tab 2	Rock Fusco & Connelly, LLC Case No. 10 C 6682	*Satkar v. Cook County, et al.*

Tab 3	Donohue Brown Mathewson & Smyth LLC Case No. 10 C 6682	*Satkar, et al. v. Cook County Board of Review, et al.*
Tab 4	Peterson, Johnson & Murray, LLC Case No. 12 L 5432	*Gwendolyn Bell v. Cook County*
Tab 5	Peterson, Johnson & Murray, LLC Case No. 04 C 3367	*James Degorski v. Cook County Sheriff, et al.*
Tab 6	Peterson, Johnson & Murray, LLC Case No. 10 C 02946	*USA v. Cook County, et al.*
Tab 7	Querry & Harrow, Ltd. Case No. 07 C 855	*Hernandez v. Cook County Sheriff's Dept., et al.*
Tab 8	Special State's Attorney Alexander Polikoff and the Business and Professional People For the Public Interest	*Blanchard v. Berrios* Case No. 13 CH 14300

Vice Chairman Fritchey, seconded by Commissioner Schneider, moved to Adjourn. The motion carried unanimously and the meeting was adjourned.

SECTION 2

YOUR COMMITTEE RECOMMENDS THE FOLLOWING ACTION WITH REGARD TO THE MATTER NAMED HEREIN:

Communication Number 324536 — Recommended For Approval as Substituted

FINANCE SUBCOMMITTEE ON LITIGATION

Peter N. Silvestri

PETER N. SILVESTRI, CHAIRMAN

ATTEST: Matthew B. DeLeon

MATTHEW B. DeLEON, SECRETARY

*An audio recording of this meeting is available in the Office of the Secretary to the Board, 118 North Clark Street, Room 436, Chicago, IL 60602