

Statement of Corporation Counsel Stephen R. Patton
In Support of the Department of Law's
Proposed 2012 Budget

October 31, 2011

Thank you for the opportunity to testify before you today in support of the Department of Law's ("DOL's") proposed 2012 budget.

This testimony is organized into three parts. Part I provides a brief overview of the Department, including its mission and the work that it performs. Part II sets forth a number of initiatives that I laid out when I last appeared before this Committee on June 7, 2011 in support of my appointment as Corporation Counsel and our progress to date in implementing those initiatives. Part III sets forth some examples of DOL's work -- and what the City and its taxpayers received in return for their investment in the Department -- in 2011.

I. Overview

DOL attorneys specialize and satisfy the City's legal needs in a wide array of areas. This includes police, tort, and employment litigation, municipal finance, affordable housing, aviation, civil rights, environmental law, and collective bargaining. The Department is fortunate to employ some of the City's most prolific and talented trial attorneys, as well as high-caliber transactional attorneys who finalize complicated and large financial transactions for the City. All of this work is done for a fraction of what outside law firms would charge and by individuals whose institutional knowledge and experience results in high quality work product and informed, solid advice.

The Department works closely with the Mayor, City Departments, Boards and Commissioners, and the City Council: to protect the public safety and maximize the quality of life for the citizens of the City; to minimize the City's exposure to financial liability for claims and lawsuits; and to seek revenue and savings to which the City is entitled for the benefit of its taxpayers.

II. Key Initiatives

When I testified before this Committee in support of my nomination as Corporation Counsel on June 7, 2011, I identified a number of initiatives that I intended to pursue. This included (1) reducing outside counsel costs, (2) reducing the amounts the City spends on settlements and judgments, and (3) identifying and achieving other cost savings and efficiencies in the operation of the Law Department. During my meetings with aldermen as part of the confirmation process, a fourth focus became clear – aggressively enforcing the City’s ordinances, particularly those relating to vacant and abandoned buildings. Finally, the City’s current financial and budgetary challenges have prompted DOL to place an increased emphasis on its role in generating revenue for the City (an estimated \$132 million in 2011). Each of these initiatives is briefly addressed below.

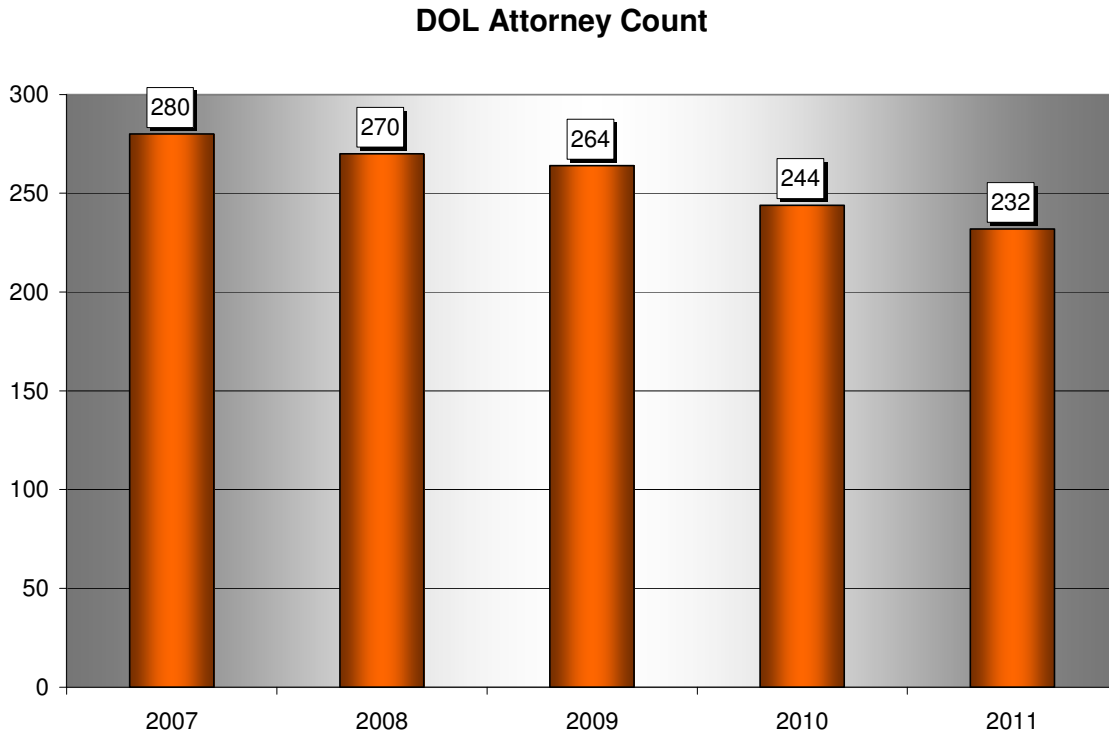
A. Reducing Outside Counsel Costs

In my June 7, 2011 statement to the Budget Committee, I stated that, pursuant to Mayor Emanuel’s directive that all of the City’s departments identify and realize cost savings and efficiencies, I intended to “reduce outside counsel costs, which have risen substantially over the past several years as attorney hiring within the Law Department has decreased and legal work that was previously done in-house has been sent to outside law firms.” I further testified that I intended to do this by filling some of DOL’s vacant attorney positions, which would “enable us to decrease our reliance on outside counsel and keep more work in-house, which will save taxpayer dollars.”

In the past five months, we have taken significant steps to make this initiative a reality. The number of police cases referred to outside counsel, which totaled 245 in 2009, 205 in 2010, and 88 during just the first five months of 2011 and were projected to total 180 by year end 2011, have declined to only 9 cases since June 1. At the same time, DOL has received approval to fill 10 long-vacant positions in its Police Litigation Division, at an average salary of \$60,290 per position. This works out to approximately \$45 per hour (including 38% benefits and assuming these attorneys work on average 2,000 hours per year). Thus, these attorneys are performing work at a cost of approximately \$45 per hour that was previously performed by outside counsel at a cost of up to \$295 per hour. We estimate that these steps will reduce the City’s spend on outside

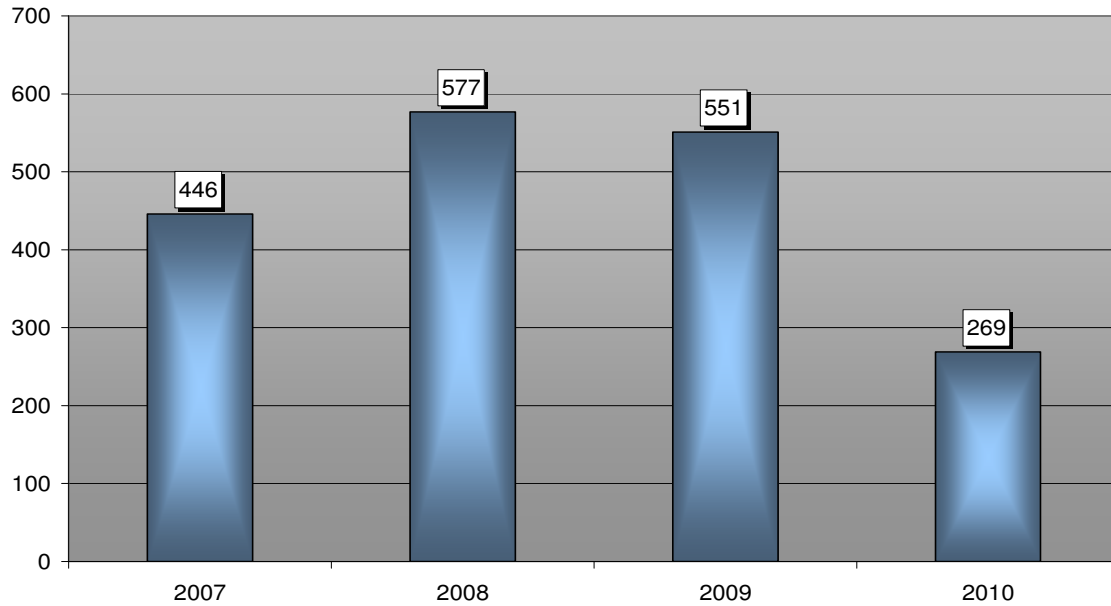
counsel by \$3 million this year and an additional \$6.8 million in 2012. The background and circumstances that prompted us to take these steps are described below.

In 2007, DOL employed a total of 280 attorneys. Due to attrition and unfilled vacancies, this number had declined by almost 20% to 232 attorneys by 2011.



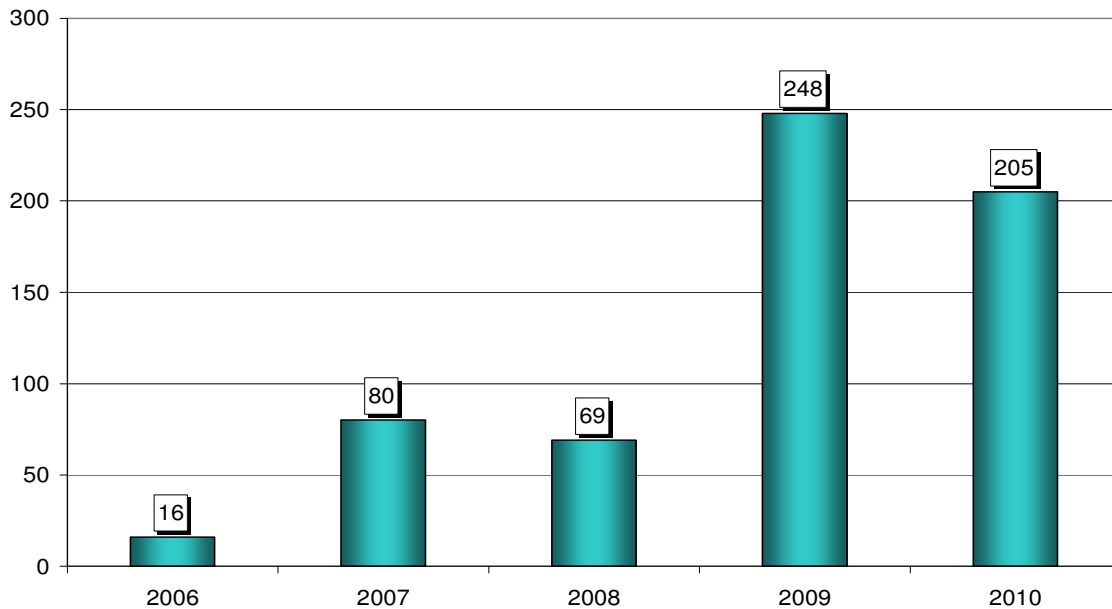
However, the number of new lawsuits filed against the City did not decline. To the contrary, they actually increased until 2010 when, for unrelated reasons described below, they began to decline. This is illustrated by the following chart, which shows the number of new police cases filed against the City each year from 2007-2010.

Lawsuits Filed Claiming Intentional Police Misconduct



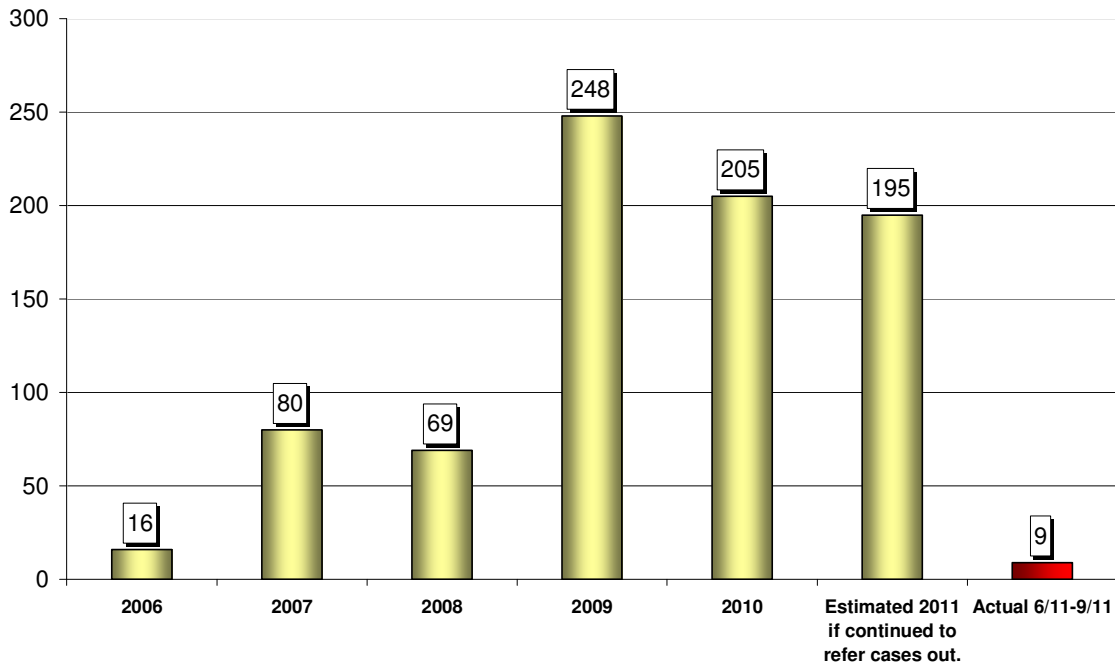
This combination of an increasing number of lawsuits to defend and a decreasing number of attorneys to defend them resulted in the decision to refer an increasing number of cases that had been previously handled in-house to outside counsel. This is illustrated by the following chart, which shows the number of police cases referred to outside counsel from 2006-2010.

Police Cases Referred To Outside Counsel



Since May, we have largely ended this flow of newly-filed police cases to outside counsel. During that period, DOL has referred only nine police cases to outside counsel for resource reasons.

Police Cases Referred To Outside Counsel For Resource Reasons



These cases are now being handled in-house by DOL attorneys. In order to staff these cases, we have obtained approval to fill a total of 10 previously-vacant positions. We estimate that filling these vacancies, and DOL’s corresponding ability to handle these and future new cases in-house, will result in net savings (i.e., the reduction in outside fees minus the increased costs of 10 in-house lawyers) of at least \$5.8 million in 2012.

In my June 7, 2011 statement, I also proposed to reduce outside counsel costs by asking Chicago law firms to represent the City in significant litigation and transactional matters pro bono. I noted that this would result in “a win-win proposition in which the City will receive high-quality legal assistance at no cost and the outside firms will receive an opportunity to give back to, and be recognized for helping to maintain, the robust, fiscally-viable municipal home that contributes to their success.”

We have also made significant progress in implementing this initiative. To date, four prominent Chicago law firms have agreed to take on significant

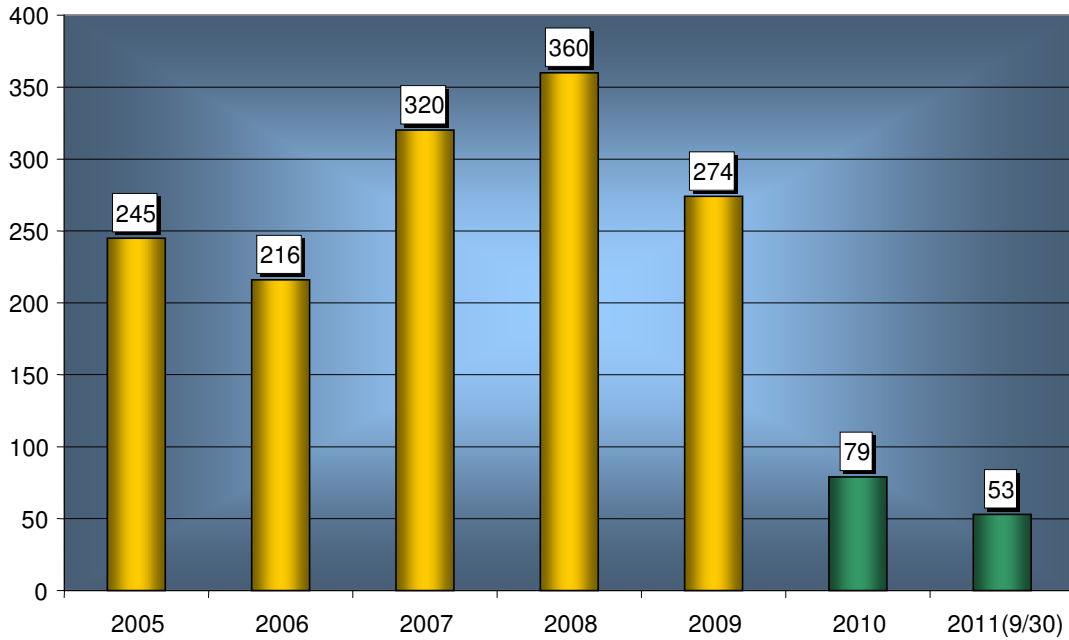
litigation and transactional matters at no cost to the City. This includes two major litigation matters and two major transactional matters. The fees the City will avoid as a result of these pro bono arrangements are estimated to total more than \$3 million over the life of these matters.

B. Reducing Settlements and Judgments

Another initiative referenced in my June 7, 2011 statement was taking steps to reduce the millions of dollars the City pays each year in judgments and settlements. This is an objective that will take time to fully realize. However, we are in the process of taking a number of steps that, over time, we believe will reduce the amount the City pays in judgments and settlements.

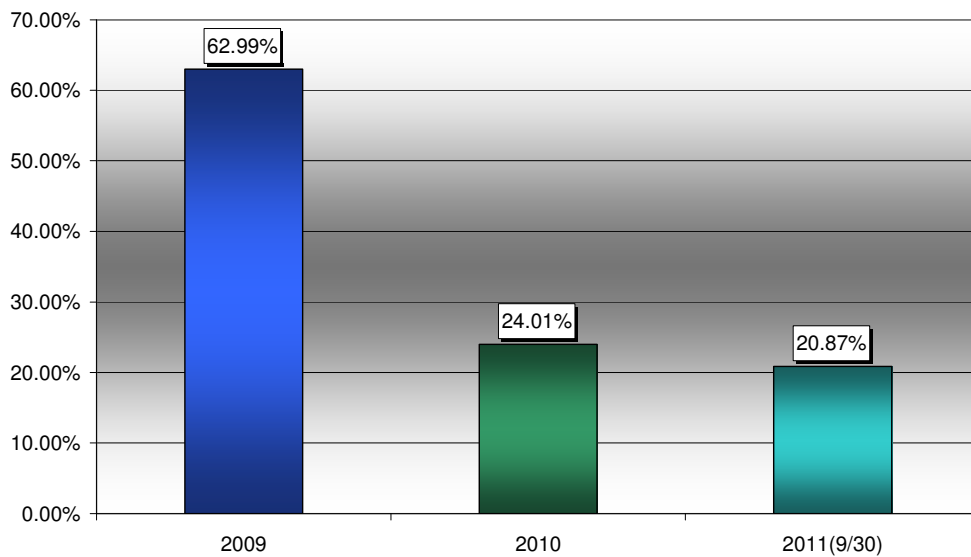
This includes trying – and winning – more cases, particularly police cases. In part, this represents a continuation of a policy DOL first started in late 2009 of litigating non-meritorious police cases, even where such cases could be settled for relatively small amounts. This reversed a prior policy of settling such cases, which resulted in a number of law firms filing an increasing number of often non-meritorious cases, banking on the fact that they would settle before trial. This settlement policy reached its high-water mark in 2008, when a total of 360 cases -- 63% of all police cases resolved in that year -- were settled. This is reflected in the chart below which shows the number of police cases settled each year from 2005-2011. This chart also shows the dramatic reduction in the number of cases settled starting in 2010. This reduction has continued in 2011.

Number of Police Intentional Misconduct Cases Settled



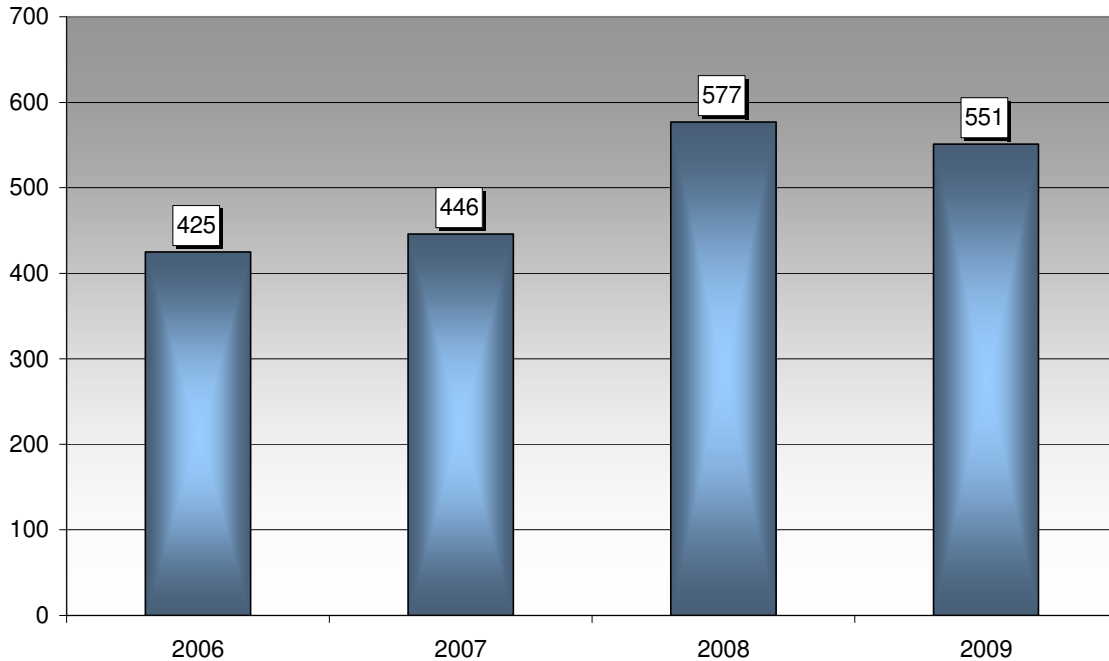
As shown below, the new policy of trying all defensible cases resulted in an immediate and substantial reduction not only in the total number, but also the percentage, of cases settled. Thus, the percentage of cases settled dropped from 70% in 2009 to 24% in 2010. We have continued that policy in 2011, further decreasing the percentage of cases settled to 21%.

Percentage of Intentional Police Misconduct Cases Resolved by Settlement



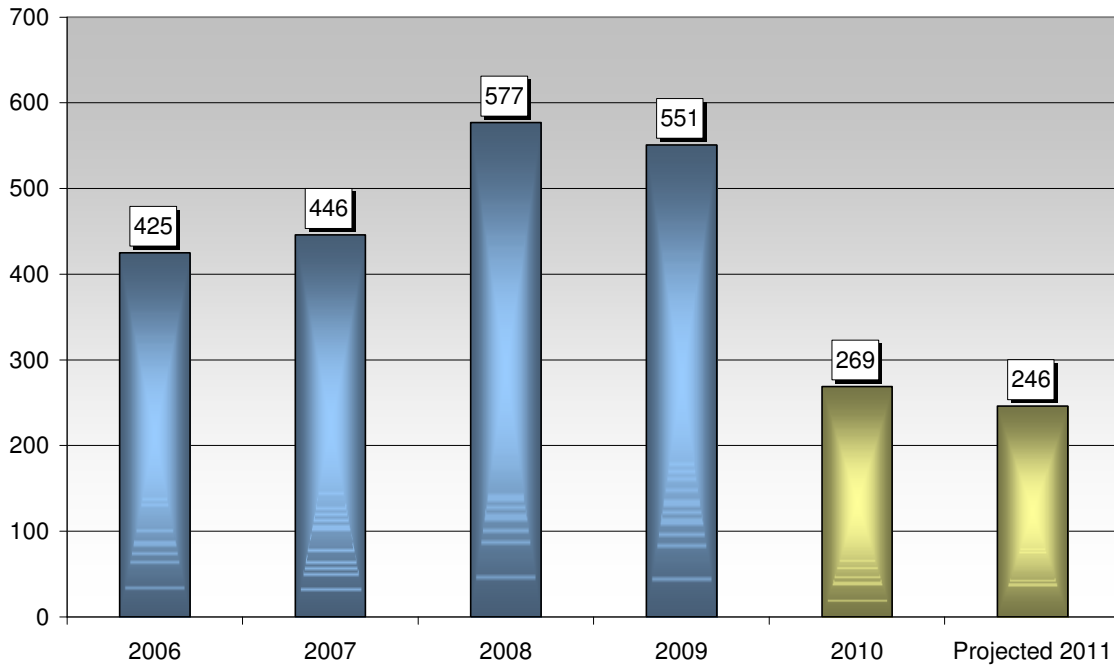
As anticipated, the policy of trying all defensible cases, even small cases, has greatly reduced the number of new police cases filed against the City. During the period in which the prior policy of settling such cases was in effect, the number of new cases filed against the City increased dramatically, to 577 cases in 2008 and 551 cases in 2009, respectively.

Lawsuits Filed Claiming Intentional Police Misconduct



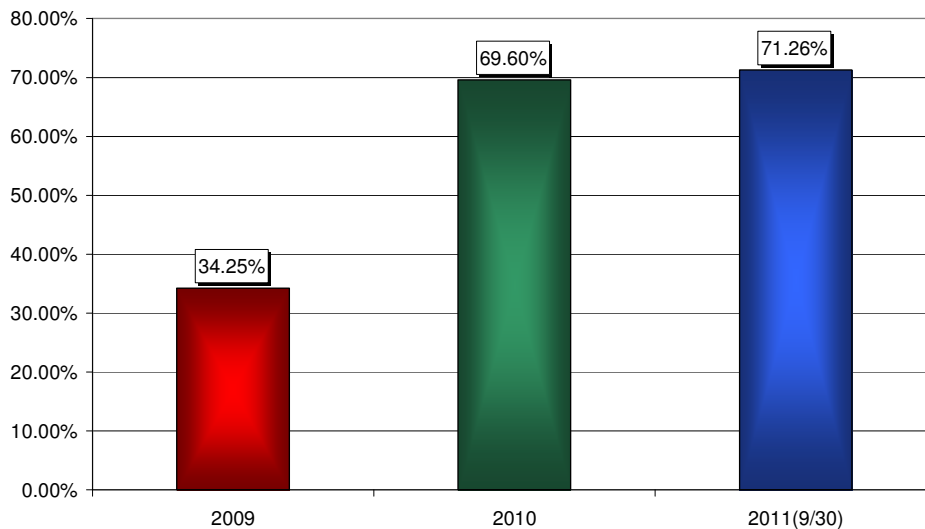
Starting in 2010, after the start of the new policy, the number of new filings dramatically decreased by 51% (from 551 in 2009 to 269 in 2010). This decrease has continued in 2011, with 246 new cases projected to be filed in 2011.

Lawsuits Filed Claiming Intentional Police Misconduct



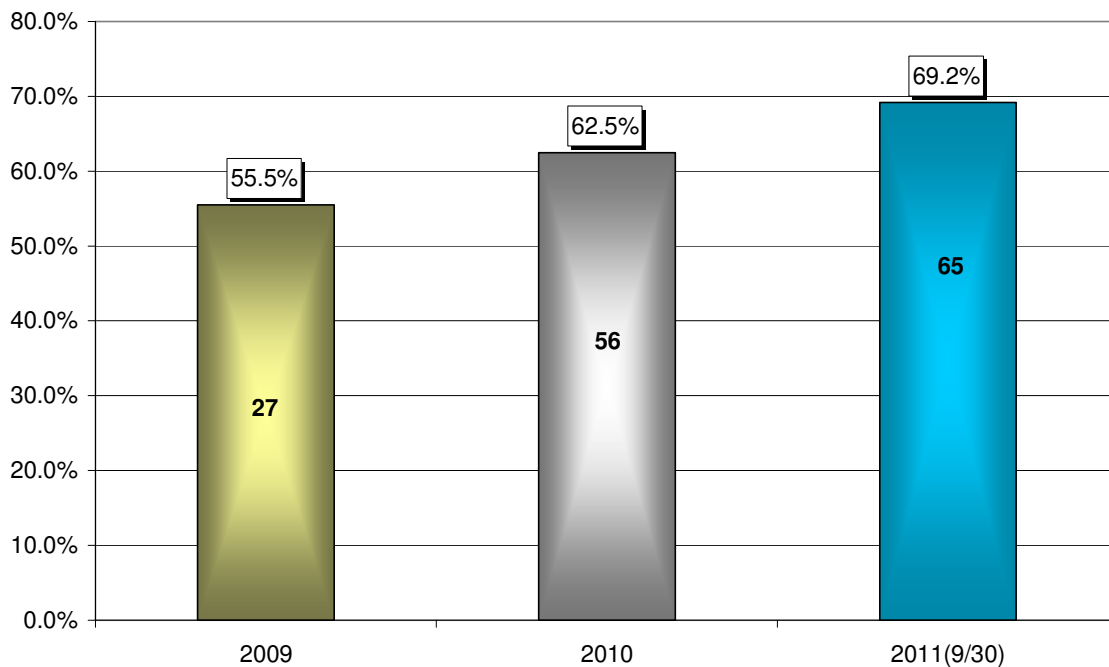
At the same time, the percentage of cases that are resolved with the City making no payment to the plaintiff has more than doubled, from 34% in 2009 to 70% in 2010. Once again, this trend has continued in 2011. Through September 30, of all police cases that were resolved, 71% involved no payment by the City.

Percentage of Intentional Police Misconduct Cases Disposed With No Payment By City



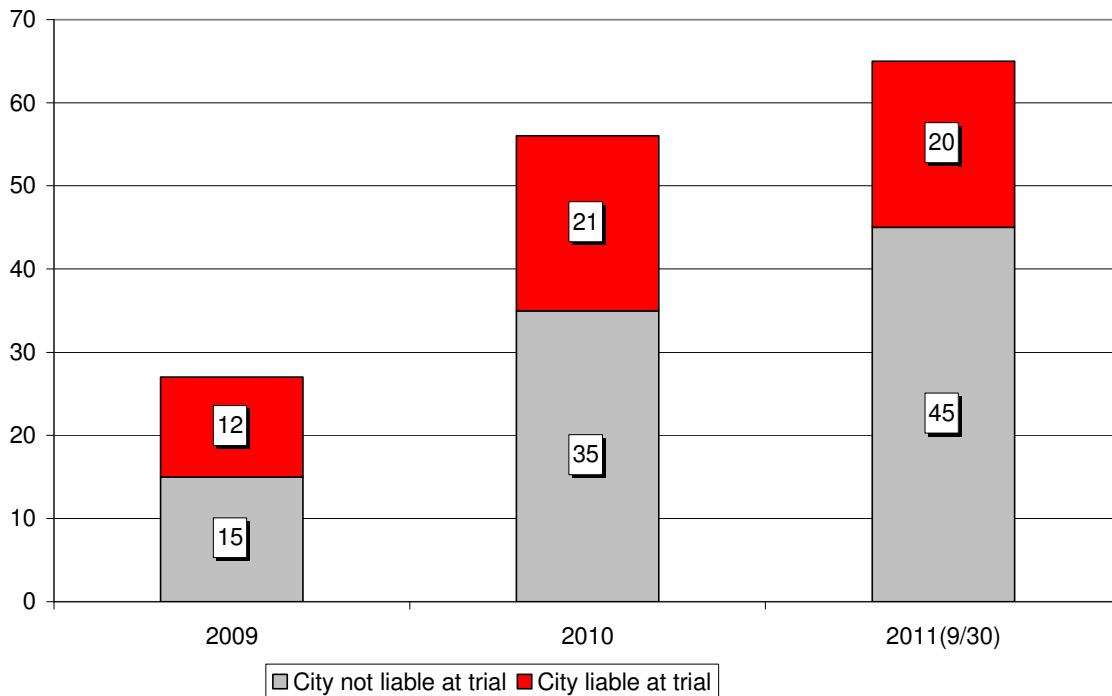
Relatedly, during this same period the City has also dramatically increased the number of police cases that it has tried. This is reflected in the following chart, which shows the percentage of police cases tried in 2009, 2010, and YTD 2011. These numbers have increased from 27 cases tried (28% of all cases) in 2009, to 56 cases tried (56% of all cases) in 2010, to a total of 65 cases tried (65% of all cases) in just the first nine months of 2011.

Percentage Of Trial Victories In Police Misconduct Cases



More importantly, DOL has increased not only the number and percentage of cases it tries. The following chart also shows the number and percentage of these trials that were won each year from 2009 – 2011. Once again, the increase is significant. The City won 15 of 27 or 55.5% of the cases it tried in 2009. In 2010, the City won 35 of 57 trials, or 61.4% of the cases it tried. In just the first nine months of 2011, the City has won 45 of 65 trials, or 69.2% of the cases it has tried.

Trial Results in Intentional Police Misconduct Cases



C. Other Cost Savings and Efficiencies

Pursuant to the Mayor's directive, in June 2011 DOL cut 7.3% from its senior manager budget by eliminating and combining positions. Our proposed 2012 budget continues this initiative. It eliminates a total of four additional positions for an additional savings of \$532,680.

We are also attempting to identify additional ways of increasing efficiency within the Department. As just one example of this effort, lawyers in our contracts division are working with the Department of Procurement Services and other City departments to draft and obtain departmental feedback and approval of a number of master template agreements covering the principle types of contracts the City enters into. These templates will provide an up-to-date, best practices starting point for satisfying a large portion of the City's contracting needs. This will reduce the cost and delay of each department and/or lawyer treating each contract as a one-off that is started from scratch. It should also help ensure greater quality control across lawyers and departments.

D. Enforcement Efforts Against Vacant and Abandoned Buildings

An issue that repeatedly arose during my meetings with aldermen as part of the confirmation process was their concern about the increasing number of vacant and abandoned buildings in their wards, and the failure of banks and other mortgagors to secure and maintain such properties. Working with Alderman Dowell and the Mayor's Office, our lawyers first addressed that issue in July by helping draft an ordinance that for the first time applied the City's Vacant and Abandoned Building Ordinance to banks and other mortgage holders. Our lawyers then participated in a series of meetings with bank representatives and assisted Alderman Dowell and the Mayor's Office in drafting an amendment to that ordinance that addresses bank concerns and threatened legal challenges, while preserving banks' and other lenders' obligation to secure and maintain vacant and abandoned properties.

DOL has also taken a number of other steps to address the increase in the number of vacant buildings and the serious problems they cause. This includes creating a new court call for targeted prosecution of salvageable vacant buildings. The goal of this new call is to compel building owners to take responsibility before their buildings attract crime or deteriorate to the point of requiring demolition. If owners fail to take responsibility for their vacant building and identify plans for re-occupancy, the City will seek receivership and civil forfeiture in addition to significant fines in order to compel compliance.

DOL is also aggressively prosecuting more than 80 distressed condominium properties and seeking de-conversion to affordable rental housing under legislation that was drafted by our lawyers in 2009. Since this law went into effect, 17 de-conversion orders have been entered, helping to preserve 205 units of affordable housing. The department anticipates more than 500 additional units in more than 80 buildings will be preserved through this initiative by the end of 2012.

E. Collecting Debts and Generating Revenue for the City

Often overlooked is DOL's role as a revenue generator for the City. In fact, DOL currently brings in annual revenues that are several times greater than the Department's total expenses. Through September 2011, those revenues totaled more than \$125 million.

This revenue is generated in a number of ways, including:

- Pursuing cost recovery from businesses and residents for violations of the Municipal Code, including board-up and demolition liens, foreclosure sales, and heat receiverships.
- Enforcing and collecting City taxes.
- Collecting parking judgments and fines, water delinquencies, and other debts owed to the City.
- Providing assistance to client departments, including the Department of General Services, Department of Housing and Economic Development, and Department of Transportation, with respect to the collection of fees and fines.

DOL has recently taken a number of steps to enhance its enforcement and revenue collection efforts. This includes:

- Issuing hundreds of citations against leading financial institutions to collect debt owed to the City, and when necessary, denying permits until such debts are paid in full.
- Helping Streets and Sanitation modernize their citation and collections process for health and safety citations, resulting in a 56% increase in revenue collected (from \$3.5 million in 2010 to \$5.4 million in 2011).

It is important to note that these enforcement and collections efforts are not only, or even principally, about collecting revenues. Rather, they are directly tied to preserving public safety. They involve enforcing the City's ordinances against individuals who neglect upkeep of property; landlords who refuse to provide heat and running water for tenants; businesses that erect illegal billboards, or operate problem establishments that attract gang and drug activity or endanger public safety; and citizens guilty of Municipal Code violations that affect the safety or quality of life of Chicago residents.

III. Examples of DOL's Work and Accomplishments in 2011

Even a summary of the various types of DOL's work and accomplishments in 2011 would be too lengthy for purposes of this statement. Accordingly, set forth below are just some examples of DOL's work – and the return to the City and its taxpayers on their investment in the Department – in 2011.

A. Building and License Enforcement

- Prosecuted scores of violations of the City's Vacant and Abandoned Buildings Ordinance.
- Through a variety of enforcement methods, preserved over 7,000 housing units throughout the City.
- Prosecuted 564 residential heat cases, impacting more than 2,000 residential units.
- Brought 350 cases to protect children from lead paint.
- Worked with the Department of Buildings to prosecute 32 cases involving false statements in permit documents.

B. Contracts

- Drafted and/or reviewed more than 500 City contracts, and scores of RFPs.
- Worked with the Department of Aviation to negotiate, draft, and approve a new master concessions agreement for O'Hare Terminal 5.

C. Debt Collection

- Increased collection of monies owed by banks and other financial institutions by more than 100%

- Assisted Streets and Sanitation in increasing collection on health and safety violations by 56%, from \$3.5 million in first nine months of 2010, to \$5.5 million in first nine months of 2011.

D. Finance

- Represented the City in the issuance of \$512,895,000 of general revenue bonds, \$275,865,000 of wastewater revenue bonds, \$363,580,000 of water revenue bonds and commercial paper, and \$21,000,000 of multi-family housing revenue bonds.
- Assisted in the financing and/or rehabilitation of several hundred affordable housing units throughout the City.

E. Labor

- Drafted employee discipline charges in over 100 cases.
- Defended the City in 200 discrimination charges, 212 arbitrations, and 24 Labor Board cases.
- Won labor arbitration allowing City to proceed with privatization of Blue Cart recycling program.

F. Legislation

- Advised Mayor's Office, Departments, and Aldermen concerning, and assisted in drafting, numerous ordinances, including the Condominium, Shooting Range, and the Construction and Demolition Debris Management Ordinances.

G. Litigation

- Employment. Won or dismissed 25 cases with no liability to the City. Settled only four cases, paying \$2500 or less in three of those cases.
- Constitutional and Commercial. Defeated challenge to City's impoundment practices and revenues; worked with DPS to resolve 20 outstanding debarment matters with City vendors.

- Appeals. Filed briefs in 70 cases. Won 43 of 51 of cases decided.
- Police. Won or dismissed 161 of 227 cases resolved through August 2011 with no liability to the City. Tried 57 cases, winning 38 of them.
- Torts. Defended 600 new lawsuits. Through September 30, won 32 of 43 cases tried, saving City \$33.2 million in adverse jury verdicts. In contrast, settlements and judgments totaled only \$5.7 million or 13.4% of what plaintiffs requested.

H. Municipal Prosecutions

- Conducted 8,090 hearings defending police vehicle impoundments for illegal weapons and drugs, suspended and revoked drivers licenses, and driving while intoxicated.
- Through September 2011, served 7,650 subpoenas, saving the City \$1.5 million that would otherwise be paid to the Sheriff's Office.
- Through September 2011, prosecuted 13,617 charges and collected \$790,000 in fines in Branch courts.
- Through September 2011, handled 755,557 traffic violations, imposing \$5.9 million in fines.

I. Real Estate

- Assisted client departments in scores of transactions involving the purchase, sale, leasing, condemnations, zoning and development of real estate.
- Represented CDOT in the vacation of City streets no longer required for City use, yielding \$5.4 million in payments to the City.
- Helped facilitate sale and development of stalled high-rise project at 111 West Wacker, and collected \$1.4 million owed by prior developer to the City.

- Acquired 20.5 acre site from Rosehill Cemetery for future park and nature preserve.

J. Regulatory – Utilities

- Challenged ComEd's charges for street lighting, saving the City \$2.5 million per year.
- Obtained \$2.4 million from TracFone in dispute over failure to collect the City's 911 surcharge.
- Obtained \$1.5 million settlement from Nextel West for unpaid telecommunication tax.
- Increased City's 911 surcharge revenue by \$1.5 million per year through settlement with AT&T.

K. Revenue Litigation

- Collected approximately \$6 million in various taxes.
- Defeated approximately \$1.4 million in property tax refund claims.
- Defeated challenge to the City's bottled water tax, which generates \$8 million of revenue per year.
- Obtained over \$3 million in disputed 911 fees from wireless service providers.