

## DRAFT LITIGATION COUNSEL

### SCOPE OF WORK

Litigation Counsel shall perform legal services in each of the areas described below:

#### **General Considerations:**

1. Perform all normal and customary duties required of litigation counsel in connection with legal issues related to defending the Commission's work.
2. Advise the Commission, Commission staff and consultants as to procedures, legality of documents, policy concerns, and legal implications concerning litigation, and specifically work with Commission, Commission staff and consultants with respect to legal issues in connection with defending the new district boundaries.
3. Advise the Commission and commission staff regarding the requirements of State and Federal laws relevant to the litigation.
4. Attend various Commission meetings and hearings as requested by the Commission or Commission staff. Litigation Counsel may be required to submit written interim and final reports and summaries as requested by the Commission or Chief Counsel.
5. Participate in Commission business meetings and such other public meetings, as agreed to by the Commission and Litigation Counsel, as necessary, to advise the Commission on all legal issues associated with litigation.

#### **Litigation Management Guidelines**

##### **I. Case Development**

An effective and strategically sound legal defense to the matter at issue is the responsibility of Litigation Counsel and the Commission. This defense should be developed in a timely manner.

- A. The activities necessary to defend a given claim and bring it to an appropriate resolution should be addressed early, and the steps necessary to achieve that resolution should be jointly agreed upon among Litigation Counsel and the Commission.
- B. Case strategy will also be coordinated with co-counsel.

##### **II. Case Staffing**

Litigation Counsel will designate a senior attorney to have primary responsibility for each case on which legal services are requested. The case should be staffed effectively and economically. The designated senior attorney will be an attorney on staff in the law firm who has the requisite level of expertise to effectively manage the lawsuit.

- A. Depending upon the nature of the litigation, the senior attorney may be an associate, partner or senior partner.
- B. The assignment of the senior attorney to a matter requires prior discussion and agreement by the Commission's Legal Affairs Committee.
- C. Litigation Counsel will strike a balance between the efficiency a more experienced lawyer at the firm brings to a given task and the advantages of having the task performed by a junior lawyer or a paralegal. Litigation Counsel will avoid a duplication of effort within the firm.
- D. The assignment of multiple partners or associates on a case requires prior discussion and agreement by the Commission's Legal Affairs Committee.

- E. To achieve the best efficiency and value, the roles and responsibilities of the law firm staff members should be clearly defined and appropriate to each individual's qualifications, level of experience, and billing rate.
- F. Litigation Counsel will delegate work to subordinates wherever possible to achieve efficiency and cost-effectiveness without compromising quality.
- G. Litigation Counsel will confer with the Commission's Legal Affairs Committee with respect to the roles and responsibilities of the proposed members of the defense team before that selection is finalized

### **III. Reporting Requirements**

The Commission encourages and prefers the use of email as an alternative to the use of mail, fax, or other delivery services. Overnight mail, couriers, and other means of express mail delivery are to be avoided unless necessary and required.

#### **A. Reports**

Legal Counsel will keep the Commission's Legal Affairs Committee and the Commission apprised of all significant developments in the case. Reporting of the following is required:

#### **Acknowledgment of a New Case**

Upon receipt of a new case, Litigation Counsel will send an acknowledgment letter regarding receipt of the matter, confirm that the firm has no conflicts in defending the matter, advise the initial legal staffing of the case, raise any issues of immediate concern and offer insight that may result in the opportunity for early resolution.

#### **Initial Evaluation**

Unless otherwise agreed to by the Commission's Legal Affairs Committee, Litigation Counsel will provide in a timely manner an initial report to the Legal Affairs Committee, either orally or in writing as may be appropriate, that provides the following information:

1. The factual basis for the litigation, a summary of the information developed during the preliminary investigation, a preliminary evaluation of liability and damages and a discussion of the legal issues presented.
2. A summary of the allegations in the complaint is not necessary unless requested by the Litigation Affairs Committee.
3. A Litigation Plan that will:
  - a. Identify each significant activity counsel proposes to initiate (e.g., investigation, motions, discovery, legal research, etc.);
  - b. Identify discovery and motions that have been, or are likely to be initiated by other parties;
  - c. Estimate the completion date for each activity; and
  - d. If requested, prepare a budget that estimates the cost of each activity.
  - e. All such plans will be developed jointly with co-counsel to avoid duplication and take advantage of the resources available at both firms.
4. Discussion of the potential for early disposition of the case by settlement and recommendations with respect to arbitration, mediation or direct settlement negotiations; and
5. Discussion of when motions to dismiss or motions for judgment are appropriate and the potential success of dispositive motions prior to, or after, the commencement of discovery. If this

information is unknown at the time of this report, this discussion will be presented prior to the filing of any dispositive motion

6. An estimate of the probable hearing and trial date(s)

### **Significant Developments**

Litigation Counsel will communicate and apprise the Commission of significant developments as soon as practicable. Examples include: deposition reports, pre-trial reports, and expert reports and if applicable:

1. Settlement opportunities and/or dispositive motions.
2. Updated evaluation of the potential merits of the claim.
3. An updated Litigation Plan.
4. Trial or Appellate Argument Report: Unless otherwise agreed to with the Commission, at least sixty days before the scheduled trial date or appellate argument, Litigation Counsel, in coordination with co-counsel, will submit a report detailing the issues, evaluating the opposition, the witnesses and the judge, summarizing the evidence to be submitted and providing an analysis of same, along with any other information requested by the Commission or the Legal Affairs Committee. It is understood that in some circumstances, it may not be possible to provide this information 60 days prior to trial or appellate argument. In this case, Litigation Counsel shall provide the report at the earliest possible time in advance of any trial or hearing.

### **B. Documentation**

The Legal Affairs Committee will be copied on research memoranda, legal briefs, expert reports, dispositive motion papers, deposition reports and, if requested, deposition transcripts. Additionally, Litigation Counsel will provide copies of all pleadings and amended pleadings filed by or against the party being defended. The Litigation Counsel will be copied on all orders from the court as well as the entry of stipulations, dismissals or final judgments or papers concerning any appeal.

Litigation Counsel shall comply with requests from the Commission for information and documents.

### **C. Consultation**

After submission of the Initial Report, as provided above, Litigation Counsel and the Legal Affairs Committee should discuss and endeavor to agree on the proposed activities outlined in the Litigation Plan.