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MUNICIPAL LAW

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Public Counsel and City Life

IF YOU WERE to identify the biggest law firms in New York, names like Skadden, Arps, Slate, Meagher & Flom; Simpson Thacher Bartlett; or Weil, Gotshal & Manges might leap to mind. Though they occupy the top spots on *The New York Law Journal* 100, there is another law office in New York — one whose name may surprise you — with more than 650 lawyers, whose actions involve matters covered in the media virtually every day.

I refer to the New York City Law Department, an office where I have the good fortune to serve as the First Assistant Corporation Counsel, or second in charge.

"Municipal Law" will appear in these pages on a bi-monthly basis. This column will not be another survey of significant developments or trends focusing on municipal law, however interesting that would be. The intent is more ambitious and, if successful in its execution, perhaps more compelling. From my vantage point in the city's law department and my public service experience, I hope to explore in each column the legal dimensions of issues that engage us not only as lawyers but also as citizens, from education to police protection, the environment and the public fisc.

Law Department's Broad Practice

Practitioners often associate the New York City Law Department with "slip and fall" or other tort actions, together with the occasional First Amendment case. The attention to torts is not surprising, since the law department is handling about 47,000 pending tort cases, comprising the largest portion of the office's caseload. But the law department's practice is so much broader in scope, encompassing every area and many compelling issues of municipal law. Environmental litigators protect our air and water supply. Lawyers in our affirmative litigation division press novel claims on behalf of the people of the city and recover monies due and owing the city, in one case recently reclaiming millions of dollars for the benefit of our present and future retirees in securities litigation. The Family Court division prosecutes juveniles in all five boroughs. Attorneys of this office not only represent the city in litigation but also counsel City Hall and city agencies and officers on legal questions, draft legislation that the city wants to be enacted by the state Legislature and review proposed rules that city agencies want to issue. They also play a key role in the city's economic development efforts. Each of these matters is given special urgency by the fact that it plays out in New York City, with all that implies.

Pursuant to the City Charter, the law department is the legal representative of all city officers and agencies. The chief officer of the law department is the corporation counsel. The city of New York has been represented by the corporation counsel since 1801, when the first official of that title was appointed by the Common Coun-



cil. (The first city recorder, who acted as counsel and attorney to the city, was appointed in 1683.) Sixty-eight corporation counsels have served the city. The incumbent, a former partner in the Proskauer Rose firm and President of the Association of the Bar, Michael A. Cardozo, was appointed last year by Mayor Michael R. Bloomberg.

The early corporation counsels were private attorneys who added the city to their list of clients. The 1849 Charter established the law department as a municipal office working under the corporation counsel to conduct the city's legal business. As that business grew, so did the size and organization of the law department. The corporation counsel's office today employs about 650 attorneys working in 17 separate divisions, which together manage over 100,000 cases or other legal matters a year.

The development of the law department has been part of the process of change and development in the government of New York City. Indeed, a key function of the corporation counsel's office has been to interpret the provisions of law that establish the powers of the various institutions of city government and their relationship to one another. In recent years, the office has been called upon frequently to provide advice on the powers of the City Council relative to those of the mayor in governing the affairs of city agencies. The corporation counsel has worked with various charter revision commissions appointed by the mayor to adjust the structure of city government to the city's changing needs and has provided input from various city agencies to assist those commissions in their deliberations. The law department also advises the mayor and other city officers on the city's legal relationship with institutions, from the Health and Hospitals Corporation to the City University of New York, established under state law to provide various services in the city.

A Sampling of Issues Handled

Let me focus on a few cases and matters that will provide a guide to the types of topics I hope to explore in depth in succeeding columns. These are by no means all of the significant issues handled by this office, but they offer a cross-section of our practice.

• *Environmental Law:* Early this month, the law department prepared and filed in the U.S. Court of Appeals for the District of Columbia Circuit a lawsuit challenging, on behalf of New York City, recent changes made by the federal Environmental Protection Agency to rules implementing the Clean Air Act. The changes would allow many older power plants and other pollution sources to increase their emissions without installing modern pollution-control equipment or reducing emissions from other sources. New York City residents could be particularly harmed by the resulting increase in pollution, both from local facilities and from power plants in the Midwest whose emissions are transported to the city by prevailing winds. The city and county of San Francisco have joined this action, which adds New York City to the more than 10 states (including New York State) that have already petitioned for review of the amended rules.

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Continued on page 7

*Public Counsel and City Life***Continued from page 3**

• *World Trade Center Cases:* The events of Sept. 11 resonated with particular force for the law department. Located just steps from the World Trade Center, our 100 Church St. headquarters housed more than 1,000 staff members — many of whom were in the office that morning. Aside from the practical difficulties of relocating our operations and staff (all of whom, providentially, escaped without serious physical injury), the tragedy required the law department to handle some of the most difficult and emotionally charged legal issues relating to the disaster, from drafting emergency legislation to keep the city government functioning, to working with volunteers from the private bar to expedite the processing of death certificates for the victims. Since that time, a special unit consisting of 21 attorneys has been created to handle the more than 2,330 claims totaling over \$12 billion against the city alleging property damage and personal injury arising from the disaster. The law department is also deeply involved in the efforts to restore the vitality of Lower Manhattan.

Tort Payouts

• *Sidewalk Litigation:* The city's tort payouts have risen during the past 25 years by 2,600 percent. During these years, the city's judgment and claims expenditures in tort cases increased from \$21.4 million in 1978 to about \$500 million in each of the last two years. A substantial part of that amount has resulted from sidewalk "slip and fall" cases, which cost the city \$10 million to litigate and \$60 million in judgments a year. Whether such figures are justifiable has been the recent subject of intense discussion, in these pages and elsewhere, and will not be debated here. Nevertheless, in a time of fiscal crisis, this area has been a focus of the city's legal reform efforts. The Bloomberg administration is urging the City Council to pass legislation drafted by the law department that would make property owners (other than the owners of one-, two- and three-family dwellings) and not the general public liable for failure to maintain adjacent sidewalks. The law department

has also drafted legislation before the state Legislature that would require that awards for future lost earnings in tort cases brought by public employees against public entities be reduced by payments from collateral sources, as is the case with lawsuits brought against private entities.

• *Public Safety:* Law department attorneys successfully represented the police department in federal district court in obtaining a modification of the terms of the so-called Handschu consent decree, a 1985 agreement that severely limited the ability of the police department to investigate possible terrorist activity. The city's response to terrorist threats while protecting First Amendment freedoms will be the focus of our most careful attention.

• *Economic Development:* Law department attorneys helped prepare and then oversaw the execution of all documentation required in order for the Republican National Committee to approve New York City as the site for the 2004 Republican National Convention. In doing so, they worked with lawyers representing the New York City Host Committee 2004, the Republican National Committee, Madison Square Garden, the Empire State Development Corporation and the United States Postal Service to resolve a host of questions, including issues of insurance coverage and liability for damage or injury at the convention site.

Shelter-System Evaluation

• *Homeless Families Litigation:* In an effort to cope with growing homelessness and a shortage of available permanent housing, the city has increased its shelter capacity for homeless families by 26 percent during the past year. This is the immediate context of a settlement recently reached with the Legal Aid Society in a 15-year-old lawsuit touching on virtually every aspect of the city's program for providing temporary emergency shelter to homeless families. The settlement provides for creation of a new panel of special masters to evaluate the operation of the shelter system for homeless families over a two-year period and make recommendations for its modification. The city is also per-

mitted under the settlement to sanction families who violate the requirements of the shelter system, including the failure to accept a suitable apartment when one is made available.

• *Prison Litigation:* Among the numerous lawsuits against the city brought by prisoners is *Brad H v. City of New York*, a class action covering all inmates receiving mental health treatment while held in city correctional facilities. Plaintiffs alleged that the city failed to provide them with adequate discharge planning in violation of constitutional requirements and state law and regulations. The parties recently reached a settlement which, if approved by the court, would permit implementation of a discharge planning program for inmates of city jails.

• *Smoke-Free Air Act:* The law department drafted legislation, enacted recently by the City Council with the strong support of Mayor Bloomberg, that greatly extended the city's ban on smoking in public spaces and offices. The new law specifically prohibits indoor smoking in all New York City restaurants and bars. The law department also worked with the city's Department of Health and Mental Hygiene to draft rules implementing the new law.

• *Diplomatic Parking Violations:* Law department attorneys have assisted the city's Department of Transportation in establishing a parking program for diplomatic and consular officials. This initiative implements an agreement between the city and the U.S. Department of State, which the corporation counsel and the city Commissioner for the United Nations, Consular Corps and Protocol helped negotiate and which addresses the long-standing problem of unpaid parking violations incurred by representatives of foreign governments working in the city.

Conclusion

Issues such as these, seen from an inside perspective, will be the focus of "Municipal Law" in the coming months. I hope and expect that the column will provide a window to the often exciting legal issues that underlay matters of importance to the lives of New Yorkers.