

## Lines of Business

LOB #47:

### **LEGAL SERVICES**

#### **Purpose**

The Office of the County Attorney provides civil legal services and representation to the Board of Supervisors, County agencies, boards, authorities, commissions, and employees pursuant to Va. Code §15.2-1542. Its work underlies every functional area of County government. The purpose of the work of the Office is to ensure that all aspects of County government comply with all federal, state, and local laws and to protect and defend the legal interests of the County.

#### **Description**

##### **Maintaining Safe and Caring Communities**

- Provide ongoing legal advice to the Department of Housing and Community Development (HCD) and the Fairfax County Housing and Redevelopment Authority (FCHRA) regarding the acquisition, retention, and management of the County's stock of affordable housing and other programs that provide housing assistance to low and moderate income members of the community.
- Provide legal advice to County agencies regarding compliance with the Americans with Disabilities Act.
- Provide a variety of legal services to particular agencies such as Human Resources, Risk Management, the Retirement Administration Agency and its three systems, the Police Department, the Fire and Rescue Department, the Department of Public Safety Communications, the Fairfax-Falls Church Community Services Board (CSB), the Health Department, the Office of Human Rights and Equity Programs, the Park Authority, and the Juvenile and Domestic Relations District Court, Court Services Unit.
- Coordinate with the Metropolitan Washington Council of Governments as needed to prepare for and respond to various public health threats, such as Ebola cases in the region, and to assemble reference documents regarding state and federal immunization and vaccination requirements for use by all area jurisdictions.
- Provide legal advice regarding the review and update of the County's Emergency Operations Plan, including a review of legal authorities and revision of standard forms for declarations of local emergencies.
- Work with the Office of Emergency Management (OEM) on issues relating to FEMA public assistance grant funding.
- Regularly participate in on-site exercises at the Emergency Operations Center designed to keep County staff prepared for emergency situations.
- Represent the Department of Family Services (DFS) in child abuse and neglect and termination of residual parental rights cases in the Juvenile and Domestic Relations District Court, the Circuit Court, and the Court of Appeals.
- Obtain the appointment in Circuit Court of guardians and conservators for Adult Protective Services (APS) for the elderly who are abused, neglected, or exploited.
- Provide 24-hour, 7-day-a-week legal representation and counsel regarding the removal of abused and neglected children and protection of the elderly.
- Represent Child Protective Services (CPS) personnel at administrative appeals at the local and state level.

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- Represent CPS personnel at investigative or assessment interviews of alleged abusers.
- Provide training to DFS personnel on the applicable law and legal process in child abuse and neglect cases.
- Provide training to APS personnel on the applicable law and legal processes in cases to protect the elderly who are abused, neglected, or exploited.
- Provide legal services to the DFS Community Policy and Management Team.
- Review and provide legal advice on Memorandums of Understanding between DFS and other entities regarding child protective services.
- Provide legal services and representation to the CSB, including compliance with subpoenas for witnesses and records, federal privacy and confidentiality laws and regulations, and federal and state laws and regulations governing behavioral health care and intellectual disabilities compliance mandates regarding Medicaid/Medicare and other health care industry mandatory reporting requirements.
- Serve on CSB's Executive Compliance Committee.
- Provide legal advice to CSB regarding its mandatory compliance program.
- Draft/review CSB agreements with other government and non-profit agencies.
- Provide legal representation in civil commitment hearings so individuals with serious mental illness may receive involuntary treatment. Requires daily preparation and appearance at the four hospitals in Northern Virginia that provide inpatient treatment.
- Advise CSB's Emergency Mental Health Services on legal issues and legislative changes governing the civil commitment process.

### **Building Livable Spaces**

- Provide ongoing legal representation in connection with land use legislative decisions, including review and assistance in evaluating land use cases, drafting motions at the request of Planning Commission and Board members, and regular participation in meetings with the Department of Planning and Zoning (DPZ) and the applicant on more complex land use cases.
- Defend the Board's legislative decisions in land use cases in the state and federal trial and appellate courts.
- Institute condemnation actions as authorized by the Board for infrastructure improvement projects.
- Review and participate in Federal Communications Commission proceedings regarding the Telecommunications Act and other federal legislation to protect the Board's zoning authority over telecommunications facilities.
- Provide ongoing legal representation in response to requests for zoning and property maintenance code enforcement from the Department of Code Compliance (DCC), including filing complaints, obtaining final orders, instituting contempt proceedings as necessary to enforce the orders, and handling all related appeals to the Supreme Court of Virginia.
- Defend against Property Maintenance Code and Fire Code appeals before the Local Board of Building Code Appeals, State Technical Review Board, Circuit Court, and appellate courts.
- Defend against appeals from the Zoning Administrator's decisions in proceedings before the Board of Zoning Appeals and in all related *certiorari* proceedings in the Circuit Court and appellate courts.
- Provide legal review of County Code and Zoning Ordinance amendments, such as the blight abatement program, the noise ordinance, and the stormwater ordinance.
- Provide legal assistance to the various County agencies and the Park Authority for the acquisition of land and necessary land rights to complete a wide range of County projects.
- Routinely review all deeds, easements, agreements, and other transactional documents associated with incoming site plans, subdivision plans, and infill lot grading plans.

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- Provide two attorneys on a weekly basis to attend Department of Public Works and Environmental Services (DPWES) Bond Committee to review bond packages and extension requests; litigate bond default cases against developers as requested by DPWES.
- Review all proposed vacations and abandonments of public roadways, parking district proposals, and parking reduction requests.
- Negotiate and draft contracts with neighboring jurisdictions and other entities for improvements to public spaces, including parks, recreational facilities, and historic structures, among others.
- Provide legal counsel and assistance for all aspects of complex real estate transactions and real-estate based public/private partnerships including planning, procurement, negotiation, drafting, and management of related agreements.
- Represent the County in utility rate regulation cases before the State Corporation Commission.
- Assist with consumer protection issues such as licensing of taxicabs, massage establishments, and consumer complaints about businesses.

### **Connecting People and Places**

- Provide ongoing legal representation in connection with an inter-jurisdictional task force to formalize maintenance agreements for the Dulles Rail Project.
- Provide legal assistance to the County team managing infrastructure construction projects, such as the Wiehle Avenue Metro Garage, and two parking garages at the to-be-built Herndon and Innovation Center Metrorail stations.
- Provide legal review of financing plans for Board consideration relating to the construction of major County construction and infrastructure improvement projects, such as the parking facilities referenced above.
- Provide legal advice and guidance in the negotiation of complex financial arrangements for major public projects, including the Rail to Dulles negotiations for a loan in the amount of \$403 million from the U.S. Department of Transportation (USDOT) through the Transportation Infrastructure Finance and Innovation Act (TIFIA) program to cover a significant portion of the County's obligation to contribute to the cost to construct Phase 2 of the Project.
- Negotiate numerous broad agreements and specific loan-related documents with USDOT, WMATA, Metropolitan Washington Airports Authority (MWAA), Loudoun County, the Phase 2 Dulles Rail Transportation Improvement District, and the Fairfax County Economic Development Authority (EDA).
- Provide legal support and advice to FCDOT regarding the creation of template agreements with Northern Virginia Transportation Authority (NVTA) and Virginia Department of Transportation (VDOT) to streamline the process of planning and funding transportation projects.
- Review and negotiate project agreements between FCDOT and NVTA, between FCDOT and VDOT, and between FCDOT and other third-parties for transportation construction projects.

### **Practicing Environmental Stewardship**

- Provide ongoing legal assistance to DPWES regarding agreements for stream restoration projects, stormwater facility inspection and maintenance programs, and modifications to the Public Facilities Manual to better position the County for meeting MS4 Permit requirements.
- Provide legal assistance and support to the Wetlands Board and environmental planning staff regarding floodplain and wetland mitigation in the County.
- Provide ongoing legal assistance and support to DPWES staff in the application and enforcement of the County's Tree Conservation Ordinance.
- Provide legal representation and prosecute Chesapeake Bay Preservation Ordinance and Chapters 104 and 124 enforcement cases under the Fairfax County Code.

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- Provide legal advice and guidance on a Waste Disposal Agreement with Covanta Fairfax, Inc., ensuring predictable disposal fees at a below-market rate; and favorable resolution to the County following the first ever unscheduled “black plant” outage at the 1-95 Energy Resource and Recovery Facility (E/RRF), operated by Covanta Fairfax, Inc.

### **Creating Culture of Engagement**

- Provide legal advice on a daily basis to all County agencies related to Virginia Freedom of Information Act requests.
- Provide legal support to Board-appointed task forces, including Meals Tax Referendum Task Force, Bi-Partisan Election Process Improvement Commission, decennial citizen committee created to advise the Board on reapportionment, and the Food Truck Commission.
- Advise the Electoral Board and General Registrar on all aspects of elections laws.
- Provide intensive legal support on special projects such as the World Police and Fire Games.

### **Exercising Corporate Stewardship**

- Provide ongoing legal assistance to the County’s legislative team, including reviewing and commenting on proposed legislation and providing an attorney on the legislative team in Richmond during the Virginia General Assembly session.
- Provide legal training to DPZ, DPWES, FCDOT, and the Park Authority regarding changes in the law and refresher courses about a variety of legal topics.
- Assist HCD with federal and state regulatory compliance.
- Provide legal advice to the Office of Human Rights and Equity Programs regarding employment and housing discrimination.
- Defend the County and its employees in federal and state court in employment, civil rights violations, and personal injury litigation.
- Represent the County before the Virginia Workers’ Compensation Commission and the Virginia Court of Appeals in all actions under the Virginia Workers’ Compensation Act.
- Represent the County before the Virginia Employment Commission in all actions under the Virginia Unemployment Compensation Act.
- Represent the County in cases before the Circuit Court under the local government employees’ grievance procedure.
- Provide legal advice and representation to County management in grievance appeals before the Fairfax County Civil Services Commission.
- Provide legal advice and representation in employment discrimination claims filed with the U.S. Equal Opportunity Commission.
- Provide legal advice and representation for subpoenas for County witnesses and documents.
- Provide legal advice and representation to all County agencies on employment matters.
- Provide legal advice to County agencies regarding compliance with the Health Insurance Portability and Accountability Act (HIPAA) and the Affordable Care Act.
- Provide basic and in-service legal training at the Fairfax County Criminal Justice Academy.
- Provide legal advice to all County agencies regarding liability.
- Defense of erroneous real estate tax assessment litigation to protect County revenues and help maintain integrity of assessment and collections. For example, between December 2012 and January 2014, 69 tax assessment challenges were filed in court; 59 of the cases were favorably concluded. Fifty-one cases, with \$13.4 million in potential tax revenue loss, were dismissed. Eight cases, with a potential tax revenue loss of \$2.5 million, were settled for half that amount, preventing a revenue loss to the County of nearly \$15 million.

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- Advise the Department of Tax Administration (DTA) regarding strategies to minimize the potential loss of BPOL tax revenues as a result of the Virginia Supreme Court's January 2015 decision in *The Nielsen Company (US), LLC, v. County Board of Arlington County* regarding the calculation of out-of-state deductions.
- File claims and represent the County in bankruptcy cases to protect the County's interests and improve collection rates. During FY2014 and FY2015, the Office processed 400 new bankruptcy cases and collected more than \$2 million in open bankruptcy matters.
- Routinely evaluate ways to review and refer prior County tax judgments to DTA and outside collectors for further collection action to improve collection rate.
- Oversight of the outside (private) legal process for collection of delinquent taxes, zoning violation and bond default judgments, and other accounts receivable (e.g., overdue fees from School Aged Child Care (SACC), CSB, Fire Code, Housing, etc.).
- Provide legal advice and guidance to DTA regarding legal authorities and requirements related to tax collection.
- Advise the Board of Supervisors, Department of Management and Budget, and County agencies on legal issues relating to general obligation bond referendums and obtain court orders to put issues on the ballot and to authorize issuance of bonds.
- Provide counsel to the Board and individual Board members about the Virginia State and Local Government Conflict of Interests Act, the Virginia Public Procurement Act ethics provisions, and the provisions allowing gifts and complimentary attendance at community functions, as well as reporting requirements.
- Monitor County compliance with continuing disclosure requirements under Security and Exchange Commission Rule 15c2-12 and each of the County's continuing disclosure agreements. Coordinate and facilitate periodic training of appropriate County employees regarding the disclosure and financial reporting requirements of the federal securities laws and the County's Continuing Disclosure Agreements.
- Advise the Department of Procurement and Material Management (DPMM), DPWES and other County agencies on all aspects of contracting for goods and services, including construction and information technology projects.
- Assist FMD with negotiation of real property leases and provide ongoing legal advice and guidance to assist with resolution of property leasing and management issues.

### Benefits

- Serves and protects the County, and its citizens.

### Mandates

- Va. Code § 15.2-1542

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## Trends and Challenges

- Fluctuating quantity and increasing complexity of litigation and requests for legal services. These factors result in a constant strain on and necessary reallocation of this Office's legal staff and resources and a reordering of priorities.
- Increasing number of civil commitment cases filed daily, which requires constant reallocation of resources, including requiring legal staff to routinely work on weekends and holidays.
- Unpredictable number of child protective services cases that the County must prosecute on an expedited basis results in additional legal staff challenges.
- Increasing volume of requests pursuant to the Virginia Freedom of Information Act (VFOIA) that are referred to this Office for coordination, legal advice, and document review, which require immediate attention due to compressed statutory deadlines, resulting in constant reordering of priorities to meet immediate demands.
- Increasing volume of VFOIA requests throughout the County highlights the need for this Office to provide regular and comprehensive County-wide education and training regarding the statute's requirements. This function is currently only regularly performed by this Office for elected officials; in other situations, due to existing staffing limitations, training is provided by this Office on an ad hoc basis in response to requests from individual County agencies. The County Archivist does provide an annual training on VFOIA issues.
- Exponential growth of County electronic information, documents, and data will continue to create significant challenges producing information in the context of discovery, VFOIA, and subpoena requests. Although technology is available on the market to assist with this production, ultimately staff and attorneys from this Office will have to personally review the production, which taxes the resources of this Office due to the sometimes massive volume of these productions and the expedited timeframe in which the documents must be provided. It is expected that in coordination with DIT, significant effort and resources will need to be directed to addressing these issues.
- Increase in the need for regular and comprehensive County-wide education and training regarding best practices for the use, dissemination, storage, and retention of electronic information and records because these issues have significant legal risks and liabilities. Given the additional mandates from state and federal laws, this presents a challenge that is difficult to meet at current staffing levels.
- Increased number of federal and state regulatory mandates that the County is responsible for implementing, such as the Clean Water Act and federal health mandates, requires a constant reallocation of limited staffing resources.
- Growing complexity of various areas of law puts a further strain on the Office's resources. As the County's projects and functions become more complex, the applicable law also becomes more highly technical, complex, and specialized, and, to adequately meet those needs, this Office is called upon to either develop an expertise in a compressed timeframe, if possible, or to retain outside counsel.
- Increasing need to leverage private resources to develop public infrastructure will likely require additional transactional attorneys to negotiate and enforce these complex agreements and financing arrangements.

## Resources

As this line of business encompasses all activities of the agency, please refer to the table in the Department Resources section above.

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## Metrics

Metric Indicator	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Estimate	FY 2017 Estimate
Assignments Closed	2,929	2,940	2,701	3,000	3,000
Litigation Closed	1,958	1,870	1,732	1,800	1,800

The work of the County Attorney's Office is divided into two general categories: Litigation and Assignments. "Litigation" measures the number of lawsuits that are either filed by the County as a plaintiff or petitioner or filed against the County, its Board of Supervisors, and/or County employees. Cases in which the County is the plaintiff or petitioner include, among others, enforcement of the Zoning Ordinance, Building Codes, County Code, and other County ordinances; prosecution of petitions alleging abuse and/or neglect of children; and representation of petitioners in commitment hearings. The County Attorney's Office also defends lawsuits against the County, the Board of Supervisors, and/or County employees arising out of their conduct in the discharge of their official duties. Such lawsuits include personal injury, employment discrimination, civil rights violations, allegedly incorrect assessments of taxes, alleged violations of the Virginia Freedom of Information Act, and challenges to the Board's legislative decisions in land use matters, among many others.

By contrast, "Assignments" reflect essentially everything else that is not litigation. Virtually every line of business conducted by every County agency is subject to legal requirements and restrictions:

- how and where a property should be assessed for taxes;
- how to conduct an election;
- what legal requirements must be met to ensure the budget is properly adopted;
- the proper procedures for hiring a new employee or dismissing an existing employee;
- whether the County must pay Worker's Compensation for an employee's injury;
- the proper procedure for advertising, conducting a public hearing, and adopting an ordinance;
- how to lawfully rezone or redevelop property;
- determining whether and to what extent the County may assess fees relative to stormwater planning; and
- providing guidance to ensure that land use approvals comport with constitutional requirements.

In short, nearly every aspect of the County's lines of business is subject to the requirements of federal, state, or local laws or regulations. Examples of "Assignments" are, among others:

- providing specific legal advice in a formal opinion;
- providing informal and ongoing legal advice as part of the County team to ensure compliance with the law and avoid litigation;
- negotiating, reviewing, and drafting contractual documents;
- drafting and/or reviewing new ordinances and amendments to them;
- negotiating disputes that involve County agencies;
- representing County management in employee grievances,
- representing the County in administrative hearings before the Virginia Workers' Compensation Commission and the Virginia Employment Commission;

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- providing legal advice to agencies on a daily basis regarding requests made under the Virginia Freedom of Information Act, personnel issues, and subpoenas; and
- providing regular education and training to County agencies and employees concerning changes in the law and ongoing legal requirements that affect their lines of business, as well as ongoing training regarding generally applicable legal requirements such as VFOIA, procurement, and other such statutory requirements unique to local government

The County Attorney's Office strives for a 97 percent success rate for litigation. When evaluating whether litigation was "successful," an attorney considers whether the County substantially prevailed in the litigation. That is, most of the plaintiff's claims were defeated when the County was a defendant, and most of the County's claims were sustained when the County was a plaintiff. With regard to "Assignments," this Office strives for 87 percent of all assignments to be completed within a year of when they were opened. This Office regularly exceeds both metrics. It should be noted that Board of Supervisors requests and legal opinions have 14-day and 30-day deadlines, respectively.

It is also important to note that not all of the work performed by the County Attorney's Office is reflected in these metrics. For example, our attorneys regularly field phone calls from clients and elected officials who need assistance or general advice and counsel with a single question or issue. Frequently, an "assignment" is not created to reflect this work. Similarly, this Office offers guidance to multiple boards, authorities, and commissions, but attorney attendance at those meetings, for example, is also not reflected in any metric. Conversely, other types of work are expansive and complex but that work is represented as one assignment and that one metric does not capture the amount of work or length of time involved, which, at times, expands over several years on large County projects. Complex redevelopment and infrastructure projects (such as Dulles Rail and the Laurel Hill Redevelopment), the negotiation of cable franchise agreements, and ordinance drafting are each counted as just one assignment metric.