INTRODUCTION

The words of the esteemed Judge Simon Sobeloff still astutely describe the workings of the City Solicitor’s Office.1

The City Solicitor is the City’s chief law officer- and he is much more than that. The mere enumeration in the City Charter of the duties and responsibilities vested in that official is sufficiently impressive, but they convey no adequate idea of the extent and the ramification of his official activities….He is called upon to deal with many problems unrelated, except by the most tenuous thread, to the duties explicitly fixed for him by law.2

Judge Sobeloff witnessed the Solicitor’s Office during the Depression with its staff of 18 attorneys and 22 support staff. What he described then as a “striking growth in the volume of the City’s legal business” is a far cry from the volume and complexity of legal matters presented to the City’s Law Department today. With a staff 66 of lawyers and 44 support staff, the Department of Law is composed of eleven practice groups which meet the daily demands, both mandatory and discretionary, of the Mayor, the City Council and more than 15 City departments, agencies, boards and commissions.

1 Simon E. Sobeloff (December 3, 1894 - July 11, 1973) was an American attorney and jurist, who served as Solicitor General of the United States, as Chief Judge of the Court of Appeals of Maryland, and as Chief Judge of the United States Court of Appeals for the Fourth Circuit.

2 Stieff, Frederick Philip (compiled), The Government of a Great American City, H.G. Roebuck and Son 1935
MISSION

The Law Department provides vigorous and successful advocacy of the interests of the political subdivision known as the Mayor and City Council of Baltimore (“the City”). As elaborated in the City Charter, Article VII Sections 24-26, this entails defending and prosecuting litigation, protecting the corporate and financial interests of the City in the negotiation and consummation of contractual, financial, and real estate transactions, providing an outstanding collections effort for monies due the City, as well as furnishing sound and timely legal advice and counsel to the Mayor, the City Council, and City departments, officials and boards and commissions.

ORGANIZATION

Under the leadership of George A. Nilson, the City Solicitor since January of 2007, the Law Department is currently organized into the following practice groups:

ADMINISTRATION PRACTICE GROUP

The Administration Practice Group, headed directly by the Solicitor, provides four important services: 1) directing and supervising the City’s legal work; 2) staffing boards and commissions; 3) managing the budget and logistics of the Law Department; and 4) directly representing the City on high priority or problematic matters. Building on the reforms of his predecessor, the Solicitor has significantly upgraded legal representation and outcomes for the City as well as Department morale. In the words of Chief Administrative Judge for Baltimore City Circuit Court, Judge Marcella Holland, “This Law Department is the best that anyone can remember.” The Department will continue to improve by implementing our strategic plan (as budgeting permits) and by annually obtaining Department-wide feedback from clients.

CONTROVERSIES

Central Bureau of Investigations

The Central Bureau of Investigations (CBI), led by Deputy Chief of Litigation Kurt Heinrich, is under the direction and supervision of the Chief of Litigation, Matthew Nayden. CBI is responsible for handling all pre-litigation claims filed against the City. The two primary functions of CBI are to: (a) investigate and then expeditiously adjudicate and resolve those matters where liability is clear; and (b) investigate and prepare disputed claims for litigation pursuant to the Local Government Tort Claims Act.
The Central Bureau of Investigation works closely with the Litigation Practice Group in the investigation of any claim asserted against the City pursuant to the Local Government Tort Claims Act. CBI has steadily reduced the amounts paid out in claim settlements in the past few years, although the number of claims against the City increases steadily.

As a self-insurer, the City covers liability for claim damages from its own financial resources and reserves. CBI claims are divided into two categories: General Liability and Auto/Animal Liability. General Liability claims are tort claims that are not workers compensation or auto/animal claims, such as sewer backups, water main breaks, sidewalk falls and demolitions or excessive force claims against police officers which are handled by the Police Legal Affairs Practice Group. Auto/Animal Liability claims are those claims involving any wheeled vehicle owned or rented by the City, including cranes, generators and excavators, or involving City-owned animals. Each claim is assigned to an investigator who functions as a claims adjuster and also has various responsibilities which include photographing accident scenes, interviewing witnesses and claimants, securing accident reports and agency records and evaluating personal and property damage. Settlements of $2,500 or less require approval by the Deputy Chief Heinrich. Settlements up to $3,000 require approval by the Chief of Litigation. Settlements from above $3,000 to $5,000 require approval by the Small Settlement Committee designated by the City Solicitor. Finally, settlements over $5,000 require approval by the Large Settlement Committee, also designated by the Solicitor, and, if $25,000 or more, also go to the Board of Estimates for review and approval.

**Litigation Practice Group**

The Litigation Practice Group, led by Matthew Nayden, is responsible for representing the City in lawsuits brought at all levels of the State and federal courts, excluding suits arising out of employment, land use disputes, or police matters. Attorneys maintain a full caseload and are responsible for continuing the investigation of the allegations asserted against the City and individual City employees, as well handling all aspects of the pretrial and trial litigation of those matters when necessary. This Group also assists the Employment, Land Use, and Police Legal Affairs Practice Groups in federal and State litigation as needed.

The majority of the matters handled in Litigation are in the defense of the City. New litigation is analyzed, assessed for damage exposure, assigned for defense and monitored throughout the litigation process. One of the Group’s priorities is to use lessons learned from litigation against the City to educate City departments, agencies and employees on what actions create liability for the City and on how to minimize liability exposure in the future. The Litigation Practice Group constantly addresses new
challenges to the preservation of the City’s defenses of governmental immunity and notice. The Group also asserts and aggressively attempts to preserve the damage limits established by the State.

The Practice Group has been highly successful in protecting the City fisc, and ultimately the taxpayers from unwarranted liability payments. Despite increases in the number of suits against the City, the defensive litigation protocols the Group instituted have resulted in fewer settlements and judgments against the City and lower damage settlements and judgments. Plaintiffs’ attorneys are learning that merely filing a suit against the City will not result in a settlement, but that the City aggressively defends claims whenever appropriate. The resulting positive outcomes discourage the filing of nuisance suits, thus curbing the national trend of ever increasing claims. The Group now achieves a 75% litigation win rate. As to damage awards, in Fiscal Year 2013, this Group defended the City in 362 lawsuits which sought a total of $355,381,088 in damages. As a result of the Group’s work, the City paid only $1,736,707 in damages -- less than ½ of 1% of damages sought on those suits (less than .05%).

In addition to its defense work, Litigation is also aggressive in the prosecution of claims on behalf of the City against entities or individuals who have caused the City damages in tort or contract, or who fail to comply with federal, State or local laws that impact the City. These cases have resulted in multi-million dollar payments to the City, the creation of ongoing revenue streams, and the clearing of obstacles to major development projects.

Collections Practice Group

The Collections Practice Group, headed by Molly Keenan, is responsible for collecting money owed to the City. The Group oversees the City’s annual tax sale, offers advice on issues of bankruptcy, tax and general collection, and pursues litigation when required. The Practice Group performs all post judgment collection activities including garnishment, license suspension and monitoring repayment agreements. The staff includes 5 attorneys, six legal assistants and two support staff. For fiscal years 2007 through 2013, the Collections Practice Group collected in excess of $110 million dollars for the City, collecting $12.9M in FY13 alone.

Labor and Employment Practice Group

The Labor and Employment Practice Group, led by Gary Gilkey, represents the City in all employment related matters, advises agencies on personnel issues, serves on the City’s Policy Committee and the Mayor’s Leave Reform Work Group, reviews and
provides advice on labor contracts, and works closely with the Labor Commissioner’s Office and the Department of Human Resources. It (a) represents the City in State and federal court in all employment disputes, (b) prepares responses to charges of discrimination with the EEOC, the Baltimore Community Relations Commissioner, and the Maryland Civil Rights Commission, (c) represents City agencies before the Civil Service Commission, the State Office of Administrative Hearings, and arbitration proceedings on employment discipline cases involving suspension, demotion, and termination, (d) conducts training on City employment policies and procedures, and (e) advises the Department of Human Resources and other City agencies on employment related matters.

In FY 2013, the Labor and Employment Practice Group was successful in 90% of the cases brought in State and federal courts. The City paid out less than $200,000 in settlements and judgments, including attorney fees and costs. The Practice Group was equally successful representing agencies in administrative appeals of discipline cases, with an overall prevailing rate of 87%.

**Land Use Practice Group**

The Land Use Practice Group, headed by Sandy Gutman, represents and advises the City in several major practice areas: condemnation, zoning, environment, planning, historic preservation, and demolition of property. Its primary clients are the Board of Municipal and Zoning Appeals, the Planning Department, the Department of Housing and Community Development, the Department of Public Works, the Department of Recreation and Parks, the Commission for Historic and Architectural Preservation, the Department of Transportation, and the Environmental Control Board. In FY2013, in addition to its other work, the Group was involved in acquiring for demolition approximately 100 properties on Tiviloy Avenue in the Coldstream/Homestead/Montebello neighborhood and also acquiring properties in a distressed area of Park Heights for new baseball fields and other recreational facilities. It also helped defend the Zoning Board’s approval of the Casino Project in Circuit Court.
**TRANSACTIONS**

**Contracts Practice Group**

The Contracts Practice Group, led by Michael Schrock, negotiates, drafts, and reviews a majority of City contracts, and provides day to day contract related advice to City agencies. The City Charter requires the Law Department to review and approve all contracts before they can be approved by the Board of Estimates.

The Group is improving its efficiency by the use of technology. It makes electronic copies of select new and historical documents and is creating a reference database which can be quickly searched. It is also using a virtual database to track the status of contracts and plans to expand access to this database to its clients in the near future. The Group is also working to post standardized “fill in the blank” contracts on the Intranet; clients can fill in the blanks for a matter, and send the contract to the Group electronically, increasing efficiency.

In FY 2014, the Contracts Group drafted uniform City procedures for cooperative purchasing and emergency contracts and drafted procurement regulations for agency comment. The Contracts Group also created standardized donation agreements for the City and the Baltimore City Foundation, Inc. which the Dept. of General Services used for its “Fire Station Renovation Project” campaign to fund the renovation of 15 kitchens at fire stations. The Contracts Group also drafts and negotiates cooperative agreements with other local governments for purchase of gas and electricity and works on contracts for power generation and waste to energy facilities.

**Corporate and Real Estate Practice Group**

The Corporate and Real Estate Practice Group, headed by Richard Kagan, provides the City a one-stop shop for all the City’s real estate, economic development, lending and municipal financing requirements. The City has an extensive real estate portfolio with responsibility divided between the Departments of Real Estate, Housing & Community Development, General Services and Recreation & Parks and the Baltimore Development Corporation. These agencies are constantly acquiring, selling or leasing properties. HCD and BDC maintain active lending programs to encourage economic development and the Department of Finance has an aggressive municipal debt issuance program to provide funds for those activities and for the City’s Capital Budget Projects. Attorneys in the Group provide advice to and attend meetings of the Board of Finance, the Space Committee, the low income PILOT Committee, HCD Citi Stat, and the
Development Group.

Among the Group’s activities in FY13 were preparation of 310 option agreements for the City’s acquisition of real property interests, 260 acquisition deeds for real property interests, 57 leases, and 24 Land disposition agreements. Recent complex deals include: Harbor Point TIF and Developer’s Agreement; advice concerning Superblock LDA, Poppleton LDA, Casino Site utility relocations, Baltimore Arena and Convention Center expansion, Lexington Market Arcade Lease renewal, Coldspring Transit Oriented Development and Red Line Project;

**Opinions and Advice Practice Group**

The Opinions and Advice Practice Group, led by Elena DiPietro, provides legal advice and opinions to the Mayor’s Office, the City Council, and all City agencies, boards, and commissions. It drafts Executive Orders, reviews City and State legislation for legality and assists at all phases of the City and State legislative process. In 2013 alone, this Practice Group reviewed over 100 bills and provided ongoing support to the Planning Department and City Council in their efforts to enact a new zoning code. The Mayor signs no bill, and does not sponsor, support or oppose any state-wide legislation, without this Group’s review. A member of this Group serves on the Mayor’s Office of Government Relations Legislative Task Force during the General Assembly session, and staffs legislative workgroups pre-session.

In addition, the Group provides advice on the entire range of legal issues facing the City, including complex constitutional issues, open meeting matters, and taxation and budget matters as well as land use, health, and other regulatory matters. The group also handles the City’s responses to numerous Public Information Act (PIA) requests; in 2013 alone this Group handled 346 PIA requests. The Group assists City agencies with inquiries regarding compliance with the City Ethics Code and helps them navigate through the Ethics Board procedures. The Advice Group conducts formal PIA training for agency personnel in order to reduce client reliance on attorneys for routine PIA responses. The Group also provides training to the City Council and its staff, as well as other Law Department attorneys, on the City Charter, the legislative process, the structure of City government and the relative powers of the branches of government. The Group accomplishes all this with a staff of three full-time attorneys and one part-time attorney plus two part-time attorneys who work on PIA issues.
LEGAL AFFAIRS PRACTICE GROUP REPRESENTING THE BALTIMORE CITY POLICE DEPARTMENT

The Office of Legal Affairs, headed by Suzanne Sangree with Deputy Glenn Marrow, provides legal advice and handles all legal matters for the Police Department (BPD). It defends the Department and its members in civil litigation in both federal and State courts. It also represents the BPD in internal employee discipline proceedings, civil citation hearings, forfeiture hearings, and City Code violation hearings. The Group provides legal advice and contract review, as well as oversight for the Police Department’s Public Information Act requests and its subpoena requests. The Group engages in preventive lawyering by analyzing trends in liability findings and advising the BPD concerning risks of future litigation and liability.

Legal Affairs has a critical role in the disciplinary hearing process as the attorneys prosecute and negotiate settlements for charges of police misconduct. Working closely with the BPD, this Group ensures that charges brought against officers are provable as written and that recommended punishments are appropriate for the charges. These efforts have already born fruit. While in 2012 only 28% of officers charged with disciplinary infractions accepted the recommended punishment, that figure in 2014 YTD is 42%. Similarly, for officers who elected to have hearings on their charges, only 8% were found guilty in 2013; whereas that figure rose to 77% in 2013 and is now 80% guilty as of April 2, 2014. The Group is also working with the BPD to promulgate Rules of Procedure for the hearings, which will greatly increase the efficiency and due process protections the hearings afford.

The BPD has embarked on the ambitious project of reviewing and rewriting its entire body of General Orders which govern its operations. Legal Affairs reviews each redrafted order for form and legal sufficiency. Legal Affairs also provides critical legal services to assist the BDP in fulfilling its duties to protect law enforcement sensitive information, while enabling the Mayor’s and the Department’s innovative collaborations to improve sexual assault investigations, to reduce the incidence of violent shootings and homicides, and to improve police relationships with specific constituent communities and neighborhoods, etc.

MINORITY AND WOMEN'S BUSINESS OPPORTUNITY OFFICE (“MWBOO”)

Since the enactment of the Minority and Women’s Business Enterprises Subtitle
of the City Code in 1986, the City has relied upon the Law Department’s MWBOO Program to implement and enforce the legal requirements for general contractors to hire certified minority and women owned subcontractors for City funded work. The Program has provided critical entry for certified firms and significantly strengthened Baltimore’s economy and promoted economic opportunity. MWBOO, led by Tom Corey, is responsible for: certification of MBEs and WBEs; maintaining a directory of certified businesses; investigating alleged violations of the MWBE ordinance; maintaining statistics on availability and utilization of MBEs and WBEs; setting annual participation goals; setting contract participation goals on a contract by contract basis; setting participation goals on City-assisted project; and providing assistance to bidders and developers in identifying M/WBE firms.

INSPECTOR GENERAL

The Office of the Inspector General (OIG), an autonomous division of the Law Department, has been led by Robert Pearre since 2013. Created in 2005, the OIG exercises oversight authority and investigates abuse, waste, illegal or unethical conduct at all levels of City government, while remaining autonomous, independent and insulated from political influences.

The scope of authority and powers of inquiry vested in the OIG are, by necessity, quite broad. These include conducting objective and independent audits, reviews and investigations relating to Baltimore City Government and, in some cases, those who do business with the City, in order to:

- promote economy, efficiency and effectiveness
- detect and deter fraud, waste and abuse
- promote ethical, fiscal and legal accountability

The OIG is uniquely positioned to serve as a major contributor in the effort to build and maintain an increased level of public trust in City government and to assist the City in achieving better results with limited resources. The OIG is committed to working toward an open, honest, and accountable government. The OIG files its own Annual Report with the Department of Legislative Reference, and presents separate budget proposals to City budgeting authorities.

RECENT ACCOMPLISHMENTS AND INITIATIVES

- The Department obtained dismissals of 4 lawsuits filed challenging the development of the Horseshoe Casino. The Department prevailed at the U.S.
Fourth Circuit against a First Amendment challenge to the safety measures put in place for crowd control during Baltimore Arena events.

- The Department successfully defended most of the major reforms passed for the Fire and Police Pensions plans in the U.S. District Court and is now defending the appeal to the Fourth Circuit.

- The Department obtained affirmance from the Maryland Court of Appeals finally ending the 7 year litigation over the termination of Police Commissioner Kevin Clark.

- The Department obtained Fourth Circuit en banc review and reversal of the federal District Court decision which had declared the City’s Limited Services Pregnancies Centers Ordinance a violation of free speech. On remand the Department is defending the City’s ability to protect consumers of time sensitive reproductive health services from deception and confusion by requiring accurate disclosure of the services available at a center.

- The Department has implemented the long standing settlements and collaborated with the Court appointed monitors in two cases, NAACP v. BPD concerning quality of life arrests, and Hopson v. BPD concerning racial bias in police discipline. Each of those consent decrees expires in 2014 and we anticipate receiving favorable last reports from the monitors.

- The Department has successfully settled three long standing lawsuits against BPD, Sharp v. BPD, and Brown v. BPD and Tshamba v. BPD. The first settlement involved collaborating with the ACLU to issue a policy which instructs police personnel to allow members of the public to film police when carrying out their duties.

- The Department settled favorably after largely prevailing against the Department of Justice and Baltimore City Substance Abuse Directorate in the defense of the zoning code as it pertains to drug treatment facilities.

- As of the date of publication, the Department is finalizing settlement with Wheelabrator Baltimore, LLC. obtaining approximately $300,000 in back due taxes, $4 million in back due surcharge payments, and approximately $1.3 million in annual surcharge payments going forward, as well as an agreement to collaborate in advocating for a Maryland Department of the Environment rule change which will save the City more than $1 million annually and extend the useful life of the City’s Landfill.

- The Department successfully terminated two traffic control camera vendor contracts and settled favorably the significant potential litigation arising from both.
• The Department advised the Department of Recreation and Parks on the appropriate legal method to accept a grant from the Cal Ripken, Sr. Foundation, Inc. All three Groups in the Transactions Service analyzed the facts and legal issues related to the transaction and developed a legal opinion and corresponding documents to support the construction of an athletic field with private and public funding. This was a novel procurement approach to address the need for mixed public and private funding of a public works project.

• In FY 2014, the Department assisted the Mayor’s Office in training agencies about the Local Hiring Law through holding informational meetings, issuing rules and regulations, and drafting standard contract provisions for our clients. The Advice and Opinion’s Group and Contracts Group will continue to provide legal guidance to clients’ questions about the applicability of the Local Hiring Law to their transactions. The Contracts Group also approved revisions to the Mayor’s Employ Baltimore Executive Order so it aligned with the Local Hiring Law.

• The Department has been instrumental in the negotiations with BGE regarding franchise fees and with correcting irregularities in the application the Historic Tax Credit. The Department has also worked closely with the Finance Department to implement the initiatives of the Mayor’s 10-Year Financial Plan.

• The Department completed an MOU between the City, Baltimore City Board of School Commissioners and Maryland Stadium Authority for $1.1 billion dollars in school construction and renovation projects

• The Department completed two Master Leases totaling $30,000,000 to finance City acquisition of vehicles;

• The Department completed four Bond issuances for General Obligation Bonds and Water and Wastewater Projects totaling $517 million dollars;

• The Department completed Developer’s Agreement with Mt. Vernon Conservancy for renovation of area around Washington Monument.

**PERSONNEL**

The Department has been successful because we are able to recruit and retain outstanding attorneys, a number of whom accept pay cuts of 50% or more to work here. We provide attorneys of all levels of experience and expertise exciting and interesting work in a collaborative environment; attorneys feel that they are part of a team which is
actively contributing to the progress of the City of Baltimore. The average head of a Practice Group has 20 or more years at the bar. In turn, continuity of service ensures that Department attorneys are knowledgeable about government immunities and defenses unique to government representation, and has allowed our attorneys to forge outstanding relationships with the Courts, our elected officials, and City departments and to develop practical knowledge about the functioning of the City and its agencies.

In 2009, we started a formal annual attorney evaluation process to assist professional development. This process provides a formal opportunity for attorneys to discuss with their practice group chiefs their strengths, weaknesses, and goals, and for practice group chiefs to steer practice and training experiences in their direction in order to assist in further improvement.

Personnel policies encourage creative, energized, client friendly lawyering and have significantly improved Department service and morale despite pay freezes, hiring freezes, short staffing and furloughs. These include liberal release time for attorney continuing legal education, careful one-on-one mentoring of new attorneys, monthly Practice Group head meetings, an internal newsletter highlighting excellent work, and assignment of matters based on individual interests and expertise. Each attorney is empowered to control his or her work while enjoying ready access to mentoring, second chairing, model papers, and expert advice when needed. Each Practice Group Chief is expected to interact frequently with his or her attorneys, managing workload, ensuring quality and partnering on difficult issues, while handling his/her own share of matters. We strive to foster a collaborative legal community.

The Department continues to leverage its lawyer resources through the use of contract attorneys for select duties (e.g. responses to MPIA requests for which fees can be charged). The Department has taken on volunteer lawyers and regularly secures law student, high school and sometimes graduate student interns. The Department views the University of Maryland School of Law and the University of Baltimore School of Law as significant assets and offers opportunities during the school year for unpaid internships. Recently, the Practice Group representing the Police Department has benefitted from the work of a college senior, a retired accountant, and a volunteer new law school graduate. The Land Use Practice Group has had students from the University of Md Law school working here as externs for the past several years. A UMB professor of environmental law, William Permettai, managing director of the school’s environmental program, has for several years suggested that his students work here for academic credit. Most recently, the Group has benefitted from the work of a recent law school graduate, whose school paid him to work in the government or nonprofit sector for a year. He has done an outstanding job, and has been offered contractual employment by another City agency.
We had no position we could offer him.

The Department continues to implement the policy that outside counsel is hired only for highly specialized cases in which we do not have the niche expertise or the capacity, generally for nonrecurring needs. In addition, for appropriate matters, outside counsel is selected through an RFP process to ensure both fairness in selection and less costly services. Law Department attorneys, a number of whom have accepted pay cuts of six figures a year to work among us, cost the City an average of $55 to $65 per hour (including non-salary “burden”) — compared to hourly rates for outside counsel that run from $200 to over $600 per hour depending on the nature of the work.

The City Solicitor has advised all new hires that they may not engage in private practice. Any assistant solicitors who already had a private practice have been allowed to keep it on the condition that they regularly report the scope and nature of their practice, undertake no representation that may conflict with the City’s interests, never do private legal work on City time or from their City office, and that the volume of private practice not interfere with their work on the City’s behalf. While the Solicitor thus limits any for-profit private work, he promulgated a formal pro bono policy, which has served as a model for other public law offices, encouraging attorneys to engage in pro bono activities on their own time that do not conflict with the City’s interests.

**INTERGOVERNMENTAL COOPERATION**

The Law Department is regularly engaged in intergovernmental cooperation efforts and activities. We participate in joint “friend of the court” briefs in important cases pending in the federal courts. We cooperate and collaborate on an almost a daily basis with our legal colleagues in the Maryland Attorney General’s Office on contracts and MOUs between State and City agencies and in litigation in which both are involved. The City Solicitor confers regularly with the Attorney General’s Office and counsel to the Governor on matters of common interest to the two levels of government. In the past year, the Department assisted with an MOU between Baltimore City State’s Attorney’s Office, Prince George’s County, Howard County State’s Attorney’s Office, Frederick County State’s Attorney’s Office, and Office of the Public Defender for Maryland to share data about offenders in cloud-based software pursuant to a grant from the Governor’s Office of Crime Control and Prevention. Members of the law department attend quarterly meetings with attorneys from other local governments and municipalities to discuss recent developments in cases and legal issues of similar interest.

We participate actively in the International Municipal Lawyers Association.
Baltimore City and the Law Department are hosting the annual meeting of the International Municipal Lawyers Association in September 2014. This event will bring many visitors to the City in time for the 1812 Celebration. We will have a wonderful opportunity to show off our City.

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