

County Council of Cuyahoga County, Ohio

Resolution No. R2013-0184

Sponsored by: Council President Connally	A Resolution approving an Agreement governing the duties, powers and responsibilities of the Prosecutor’s Office and the Department of Law and authorizing the Council President to execute the Agreement on behalf of County Council; and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, Section 4.01 of the Charter of Cuyahoga County established the Prosecuting Attorney as an elected office, designating that the duties of that office “shall continue to be determined in the manner provided by general law; and

WHEREAS, Section 5.06 of the Charter of Cuyahoga County established the appointed position of Director of Law, authorizing the Director of Law to be “the legal advisor to and representative of the County Executive and County Council;” and

WHEREAS, conflicting interpretations of the Charter language have led to confusion over the respective authority of the Prosecuting Attorney and the Director of Law, which these Charter officers have attempted to reconcile as issues arose; and

WHEREAS, this Council’s Committee of the Whole has recommended that Council approve a Charter amendment for the November 2013 ballot that would resolve the ambiguities in language concerning the respective authority of the Prosecuting Attorney and the Director of Law; and

WHEREAS, representatives of the Prosecuting Attorney, the Executive, the Director of Law, and this Council have been meeting in good faith attempts to arrive at a resolution of these issues without resort to a Charter amendment; and

WHEREAS, the County Executive, the Director of Law and the Prosecuting Attorney have executed an agreement (“the Agreement”) governing the duties, powers, and responsibilities of the Prosecutors’ Office and the Department of Law; and

WHEREAS, this Council is an indispensable party to the Agreement, and desires to approve the Agreement and to authorize the Council President to execute the Agreement on behalf of the County Council; and

WHEREAS, it is necessary that this Resolution become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the efficient and effective operation of the County Criminal Justice System.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. That the Council hereby approves the Agreement governing the duties, powers, and responsibilities of the Prosecutor's Office and the Department of Law.

SECTION 2: That the Council President is authorized to execute the Agreement on behalf of County Council.

SECTION 3: It is necessary that this Resolution become immediately effective for the usual daily operation of the County and the reasons set forth in the preamble. Provided that this Resolution receives the affirmative vote of at least eight (8) members of Council, it shall take effect immediately upon adoption.

SECTION 4. It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Schron, seconded by Ms. Conwell, the foregoing Resolution was duly adopted.

Yeas: Conwell, Jones, Rogers, Simon, Miller, Brady, Germana, Gallagher and Connally

Nays: Schron and Greenspan

County Council President

Date

Clerk of Council

Date

Journal CC011
August 27, 2013

**AGREEMENT GOVERNING THE DUTIES, POWERS AND RESPONSIBILITIES
OF THE CUYAHOGA COUNTY PROSECUTOR'S OFFICE AND DEPARTMENT OF LAW**

This binding Agreement is entered by and between the Cuyahoga County Prosecutor's Office, Cuyahoga County Executive's Office, Cuyahoga County Council and Cuyahoga County Department of Law (collectively, the "Parties"), effective September 15, 2013.

WHEREAS, the citizens of Cuyahoga County, desiring to exercise the powers of home rule, adopted a County Charter, effective January 1, 2011; and

WHEREAS, R.C. 309.08(A) states in pertinent part:

The prosecuting attorney may inquire into the commission of crimes within the county. The prosecuting attorney shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party, except for those required to be prosecuted by a special prosecutor pursuant to Section 177.03 of the Revised Code or by the attorney general pursuant to Section 109.83 of the Revised Code, and other suits, matters, and controversies that the prosecuting attorney is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals. In conjunction with the attorney general, the prosecuting attorney shall prosecute in the supreme court cases arising in the prosecuting attorney's county, except for those cases required to be prosecuted by a special prosecutor pursuant to Section 177.03 of the Revised Code or by the attorney general pursuant to Section 109.83 of the Revised Code.

WHEREAS, R.C. 309.09(A) states in pertinent part:

The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, all other county officers and boards, and all tax-supported public libraries, and any of them may require written opinions or instructions from the prosecuting attorney in matters connected with their official duties. The prosecuting attorney shall prosecute and defend all suits and actions that any such officer, board, or tax-supported public library directs or to which it is a party, and no county officer may employ

any other counsel or attorney at the expense of the county, except as provided in Section 305.14 of the Revised Code.

WHEREAS, R.C. 309.09(C) states in pertinent part:

Whenever the board of county commissioners employs an attorney other than the prosecuting attorney of the county, without the authorization of the court of common pleas as provided in Section 305.14 of the Revised Code, either for a particular matter or on an annual basis, to represent the board in its official capacity and to advise it on legal matters, the board shall enter upon its journal an order of the board in which the compensation to be paid for the legal services shall be fixed. The compensation shall be paid from the county general fund. The total compensation paid, in any year, by the board for legal services under this division shall not exceed the total annual compensation of the prosecuting attorney for that county.

WHEREAS, Section 4.01 of the Cuyahoga County Charter states:

The Prosecuting Attorney shall be elected, and the duties of that office, and the compensation therefor, including provision for the employment of outside counsel, shall continue to be determined in the manner provided by general law.

WHEREAS, Section 5.06 of the Cuyahoga County Charter states:

The Director of Law shall be the legal advisor to and representative of the County Executive and County Council. The Director of Law shall be an attorney at law in good standing in the State of Ohio and shall have had at least five years' experience in advising or representing political subdivisions in Ohio.

WHEREAS, R.C. 1.62 states in pertinent part:

References to particular county officers, boards, commissions, and authorities mean, in the case of a county that has adopted a charter under Article X, Ohio Constitution, the officer, board, commission, or authority of that county designated by or pursuant to the charter to exercise the same powers or perform the same acts, duties, or functions that are to be exercised or performed under the applicable section of the Revised Code by officers, boards, commissions, or authorities of counties that have not adopted a charter.

WHEREAS, Section 2.03(12) of the Cuyahoga County Charter empowers the County Executive:

To conduct collective bargaining regarding wages and compensatory benefits with any recognized employee bargaining unit, in conjunction with the Human Resource Commission, and administer uniform personnel procedures for all County employees

WHEREAS, Section 3.09(2)-(4) of the Cuyahoga County Charter empowers the County Council:

(2) To establish departments, and divisions and sections within departments, under the supervision of the County Executive, and such boards, agencies, commissions, and authorities, in addition to or as part of those provided for in this Charter, as the Council determines to be necessary for the efficient administration of the County.

(3) To establish procedures under which the County Executive may employ experts and consultants in connection with the administration of the affairs of the County.

(4) To establish procedures governing the making of County contracts and the purchasing of County supplies and equipment pursuant to competitive bidding.

WHEREAS, the Cuyahoga County Prosecutor and the Director of Law, in civil matters, have agreed to further define the roles of their offices in representing Cuyahoga County; and

WHEREAS, the Parties desire to achieve an agreement regarding the respective responsibilities of the Cuyahoga County Prosecutor and the Director of Law without having to go through a formal charter amendment process.

NOW THEREFORE, for valuable consideration, the validity and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Roles of the Cuyahoga County Prosecutor's Office and Department of Law.

a. The Cuyahoga County Prosecutor's Office:

- i. The Cuyahoga County Prosecutor's Office shall handle all criminal matters without any interference.
- ii. The Cuyahoga County Prosecutor's Office shall advise and represent the Cuyahoga County Courts and judges in all matters, including litigation, except as otherwise expressly specified in this division of duties.
- iii. The Cuyahoga County Prosecutor's Office shall advise and represent the Cuyahoga County Board of Elections, Libraries and Library Boards, Board of Health, MetroHealth Board of Trustees, Board of Developmental Disabilities, Alcohol, Drug Addiction & Mental Health Services, Veterans Service Commission, Soldiers and Sailors Monument Board of Trustees, Soil & Water Conservation District, Community-Based Corrections Facility's Governing Board, County Budget Commission, and the Human Resource Commission in all matters, including litigation.
- iv. The Cuyahoga County Prosecutor's Office shall advise and represent townships in Cuyahoga County in all matters, including litigation.
- v. The Cuyahoga County Prosecutor's Office shall advise and represent Cuyahoga County's health and human services agencies in child support enforcement under CSEA, prosecution of abuse, neglect, and dependency complaints for DCFS and Senior and Adult Services, and quasi-criminal or civil enforcement proceedings. The Prosecutor's Office shall also represent the County's interest in adoption proceedings, which involve a youth in the permanent custody of DCFS. The Prosecutor's Office shall be responsible as the primary litigators for claims against the Department of Children and Family Services in all but labor and employment litigation for which the Law Department shall be the primary litigators. The Law Department and Prosecutor's Office can choose to serve as consulting counsel on cases for which they are not the primary litigator.

b. The Cuyahoga County Department of Law:

The Department of Law shall advise and represent the County of Cuyahoga, Executive, County Council, Inspector General, Charter Review Commission, departments, agencies, offices, employees, boards and other authorities responsible to the County Executive or Council on all legal matters, including labor negotiations and litigation unless otherwise expressly specified in this Agreement. The Law Department shall also be responsible for Court-related contracts and labor negotiations. With respect to court litigation, the following procedures shall be followed:

- i. Except as provided in subsection 1(a)(v) and sub-sections ii, iii,, iv, v, vi, and vii herein, the Law Department shall be responsible as the primary litigators for all of the County offices, including all County offices, departments, and other authorities responsible to the County Executive and Council, such as the Fiscal, Medical Examiner, Clerk of Courts, Public Works, Law, Treasurer, Sheriff, Economic Development, Health and Human Services, Purchasing (Office of Procurement and Diversity), Human Resources, Public Safety and Justice Affairs, Information Technology, and Communications Departments, County Law Library, Charter Review Commission, the County Planning Commission, and the Solid Waste District. The Prosecutor's Office can choose to serve on these matters in a consulting capacity to the Law Department.
- ii. The Prosecutor's Office shall be responsible as the primary litigators for all litigation brought against the Medical Examiner or the Sheriff and/or its employees concerning law enforcement-related operations and functions, including, but not limited to, all litigation brought by or on behalf of arrestees, pretrial detainees or inmates. The Law Department can choose to serve in a consulting capacity on these matters to the Prosecutor's Office. It is understood and agreed that the Law Department shall still serve as the primary litigators for the Sheriff and Medical Examiner

Departments on labor and employment litigation, contractual disputes, and purchasing.

iii. Board of Revision:

The County Law Department shall handle all contractual, purchasing, and labor and employment issues with the Board of Revision, its employees, and its hearing officers. The Prosecutor's Office shall continue to handle all Board of Revision appeals and shall advise the Board of Revision on all real property tax matters. Both offices will work to prevent conflict in the litigation.

iv. Foreclosure:

The Prosecutor's Office shall continue to handle all foreclosure actions.

v. Public Defenders:

The Prosecutor's Office shall continue to handle the defense litigation for the Public Defender's Office and shall work with the Law Department if there is a conflict.

vi. County Workers Compensation:

The County Executive's Office shall administer, through third-party administrators or otherwise, all County employee Workers' Compensation Claims, and the County Prosecutor's Office shall continue to handle the workers compensation appeals filed by the employer or employee in any court, including mandamus or other relief for disability benefits.

vii. Real Party in Interest:

It is understood that if litigation is against a party represented by the Prosecutor's Office, and the County is named as a nominal party in order to bind the County by judgment, the case remains within the jurisdiction of the Prosecutor's Office. If, however, the County is an actual party in interest in a multi-party litigation where the County's interest is directed by the County Executive or Council, the Law Department and the Prosecutor's Office shall each represent their respective clients' interests in accordance with the other provisions of this Agreement.

2. Designation of Law Department Attorneys as Assistant Prosecuting Attorneys.

The Cuyahoga County Prosecutor shall designate all current and future attorneys in the Law Department doing litigation for the County as Assistant Prosecuting attorneys, unless for good cause shown. It is understood and agreed that the Law Department's lawyers will appear in Court pursuant to this designation by the Prosecutor and shall so indicate on all pleadings filed in Court.

3. Inspector General:

Notwithstanding the provisions of Section 2(b), the Inspector General shall have the right to seek legal advice and representation on any matter, including litigation, from the Prosecutor's Office in addition to the Law Department. If the Inspector General determines that the Law Department is conflicted, the Inspector General shall seek such advice and representation from the Prosecutor's Office.

4. Labor Matters:

The County Law Department shall handle all labor negotiations and labor grievances for the County employees, with the exception of the County Prosecutor's Office personnel.

5. Settlement of Litigation:

The Prosecutor and Law Department agree that decisions regarding settlement of litigation belong to the client and shall abide by the Ohio Rules of Professional Conduct in all such matters. On matters handled by the Prosecutor's Office, the Law Department shall assist the Prosecutor's Office in consulting with the client regarding settlement decisions and to obtain

settlement authority when needed. Both offices shall coordinate to ensure communications with the client occur in a timely fashion and to avoid last minute requests for settlement authority. The parties shall equally cooperate in a timely fashion on securing attendance of client representatives at depositions and court appearances.

6. Outside Legal Counsel:

For retention of outside legal counsel pursuant to ORC 305.14(A), the County Council and County Executive or designee shall each select their own outside legal counsel, and the County Prosecutor shall promptly apply for the appointment of the selected outside counsel in accordance with ORC 305.14(A), unless the County Prosecutor determines that there is a conflict of interest, ethical or competence reasons for not doing so. In that case, the County Prosecutor will promptly advise the selecting party so as to allow for the selection of another outside legal counsel. It is understood and agreed that contracts for legal services with outside legal counsel shall be entered into between the County and the outside legal counsel, and the Council and Law Department shall each be respectively responsible for monitoring and handling the billing for outside legal counsel retained by them. This provision does not apply to the appointment of outside legal counsel under ORC 305.14(B) and 309.09(C).

7. Contracts:

The Law Department shall be responsible for the drafting and legal approval, including final approval as to form and correctness, of all contracts, including all debt issuance documents, for the County, County Executive, Council, departments, agencies, offices, and employees. As a service to the County, the County shall establish an electronic notification system to notify the County Prosecutor of all contracts before they are heard by the applicable county approval authority (i.e, County Council, Board of Control, or Contracts and Purchasing Board), and the Prosecutor shall notify the County of any objections (e.g., any potential criminal or conflict of interest issues related to the contractor) that the Prosecutor in good faith has to any specific contract before it is awarded by the approval authority. The Prosecutor's Office shall notify the Law Department of any such objections within three calendar days of its receipt of the electronic notification if there is a reason for any further full contract review of a specific contract.

8. Personnel in the Offices:

The County Prosecutor and the Law Director shall in good faith coordinate the use and assignment of their departments, including the need for an attorney from the other office to serve in a consulting capacity on any court matter, in a manner that avoids duplication and to ensure that the departments have lawyers of sufficient experience in the areas required to represent the County. When one office provides a consulting attorney on a matter, it is understood and agreed that the consulting attorneys serve in an advisory capacity to assist the primary litigators. The primary litigators are the ones responsible for the litigation and for making all decisions related to such litigation and do not need the approval of the consulting attorney on such decisions. All the litigators on a case shall work in good faith to cooperate as a cohesive team. Both departments agree to provide staff to the other department with the needed or unique talents for projects for the County, if needed. The staff of each office shall treat each other respectfully and in a professional manner, with both offices understanding that their highest priority is providing excellent legal services to their respective clients.

9. Collaboration Between Departments:

The Cuyahoga County Prosecutor's Office and Department of Law shall continuously work in good faith and collaborate to avoid any conflicts of interest. The offices are hereby authorized to designate each other as special counsel on matters in which they are conflicted or where they may need assistance from each other.

10. Collaboration Between the Prosecutor's Office and Law Department on Information Technology Purchases:

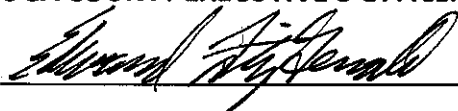
The Law Department and the Prosecutor's Office shall, to the extent possible, collaborate and coordinate together to realize taxpayer savings through joint purchases, such as through collaboration on purchasing online legal services like Westlaw and LexisNexis.

11. Binding Agreement

This Agreement shall be binding on the offices and may only be amended through a written agreement.

IN WITNESS WHEREOF, the Parties have hereunto set their hands by their duly authorized respective officer(s), and affixed the seals of said parties:

CUYAHOGA COUNTY EXECUTIVE'S OFFICE:

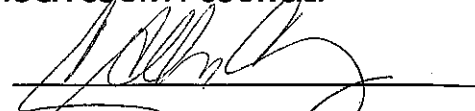
By: 

Print Name: Edward FitzGerald

Its: County Executive

Date: 8/27/13

CUYAHOGA COUNTY COUNCIL:

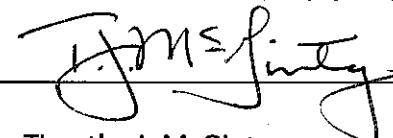
By: 

Print Name: C. Ellen Connally

Its: President

Date: 8-27-13

CUYAHOGA COUNTY PROSECUTOR'S OFFICE:

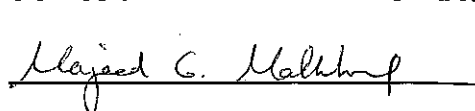
By: 

Print Name: Timothy J. McGinty

Its: County Prosecutor

Date: _____

CUYAHOGA COUNTY DEPARTMENT OF LAW:

By: 

Print Name: Majeed G. Makhoul

Its: Director of Law

Date: August 27, 2013