

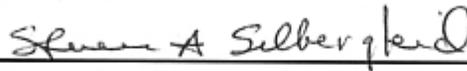
**OFFICE OF CHIEF COUNSEL**

**Annual Plan  
Fiscal Year 2004**



*Approval of this Plan constitutes an agreement between the two parties as to performance commitments; it is not an endorsement of projected resource requirements.*

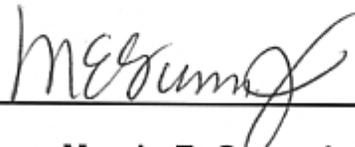
**RECOMMENDED**



**Steven A. Silbergleid  
Chief Counsel**

February 2004

**APPROVED**



**Marvin E. Gunn, Jr., Manager  
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## **OFFICE OF CHIEF COUNSEL (OCC)**

### **Mission Summary**

The mission of OCC is to provide the Chicago Operations Office (CH) with a full range of legal services, in support of its mission and responsibilities. In this way, OCC supports the CH mission of delivering a diverse science and technology portfolio, which in turn supports the Science & Technology, Environmental Quality, Energy Resources, and National Security components of the Department of Energy's (DOE) mission. In addition, through its Center of Excellence in Intellectual Property, OCC provides complete intellectual property (IP) services to other DOE field elements, as assigned.

### **Vision**

OCC is recognized as a valuable asset by its customers and stakeholders through the provision of timely and effective legal services.

### **Performance Goal**

The performance goal of OCC is to support Fiscal Year (FY) 2004 priorities and associated initiatives of CH, as well as all other FY 04 activities of CH. In particular, OCC expects its work force to acquire the necessary contractual resources to assure the delivery of quality legal services to all current CH customers while expanding its customer base to include the Berkeley and Stanford Linear Accelerator Center Site Offices consistent with the "Office of Science FY 2004 Service Plan".

### **Organization Description**

OCC is composed of the General Law Division (GL) and the Intellectual Property Law Division (IPL). The distinct legal divisions (GL and IPL) are each headed by a Deputy Chief Counsel, with three Assistant Chief Counsels in each division who perform certain team leader functions with respect to various staff or functional areas.

Within GL, each Assistant Chief Counsel is responsible for one or more functional areas and/or facilities and is supported by staff attorneys and support staff with the requisite combination of expertise and experience. Lead and back-up assignments have been made for each subject matter/functional area to enhance customer service.

Within IPL, the Assistant Chief Counsels are responsible for providing IP support and guidance in technology transfer activities to their assigned DOE organizations and laboratories with the support of staff patent attorneys and support staff. The entire division, including attorneys, paralegals and clerical staff, is responsible for protecting IP on behalf of DOE. Additionally, staff members have been assigned as subject matter experts in certain IP, invention management, and process areas.

### **Means and Strategies**

The Core Services of OCC are:

1. Providing legal services to CH and other DOE elements.
2. Providing legal services directly to CH employees, consistent with our responsibilities to management.
3. Administering CH's Freedom of Information Act/Privacy Act (FOIA/PA) Programs.
4. Protecting IP rights of the government and managing IP.

Consistent with the CH concept of "**One Chicago**," which embodies the CH mission, vision, and values, and our mutual commitment to excellence, OCC personnel work proactively and collaboratively with each CH Business Line and other customers. This means that OCC personnel, to the maximum extent possible consistent with their professional responsibilities, function as if they

were an integral part of the DOE customer organization being provided the service. For example, in providing environmental legal support to the Argonne Area Office (AAO), OCC staff endeavor to act as if they are organizationally assigned to the AAO Manager.

OCC utilizes a variety of mechanisms to identify and meet customer expectations:

Consultation. The Chief and Deputy Chief Counsels regularly consult customers regarding their anticipated need for legal resources. This information is used to identify specific OCC training and staffing requirements and priorities. Staff members also are responsible for anticipating workload requirements, and informing the Chief and Deputy Chief Counsels. The proposed resource allocation for FY04 is provided below.

Feedback. The Chief and Deputy Chief Counsels also regularly solicit feedback from customers regarding their satisfaction with legal services received, and with legal resources generally. As discussed below, this information is used to identify specific OCC performance measures and individual performance measures for the future, and is incorporated into Staff performance evaluations. Staff members also are responsible for getting feedback from customers, and for making appropriate adjustments.

Incentives. Employee expectations are developed annually in conjunction with the preparation of the Annual Plan. Individual performance expectations flow down OCC performance measures. Performance awards allocate available funding to incentivize achievement of these expectations and to reward OCC personnel whose performance exceeds assigned expectations.

### **Evaluation Methodology**

Several methods are used to verify and validate OCC performance data.

Quarterly Metrics. On a quarterly basis, OCC evaluates its progress against several performance measures that have been tracked since 1997. These are highlighted in the **Performance Measures** section, below. Data input to the evaluation is provided by the OCC Action Item Tracking System and the FOIA/PA Tracking System, as well as the IPL system, PATMIS. These systems track date received, date due, and date closed for directives, "locals", and other assignments; work for others, pre-award reviews, copyrights; Cooperative Research and Development Agreements and Joint Work Statements; invention dispositions, confirmatory licenses, and patent applications; and FOIA and PA Requests.

These systems are used by OCC Management to assure that work is being performed in a timely manner and to reassign resources, if necessary, to balance workload and/or respond to changes in customer priorities.

Operational Assessment. Following the end of each fiscal year, OCC prepares and presents a summary report on the year's results against the performance targets/commitments in the Annual Plan. Staff members and customers/stakeholders are polled to verify the status as "exceeded", "met," "partially met", or "not met."

Surveys. As a service organization, OCC places a heavy emphasis on customer satisfaction. In the past, OCC distributed a written survey to its customers annually. Results indicated that 100% of the OCC customers who responded to the survey were either satisfied or very satisfied overall with working with the OCC. However, after several years of attaining 100% on this goal, OCC noted a decline in the number of customers responding to the survey, as well as an absence of meaningful comments on quality of service or opportunities for improvement. Therefore, the Chief Counsel and Deputy Chief Counsels have subsequently relied on face-to-face and other live feedback to ascertain customer satisfaction. This feedback is used to identify OCC strengths and opportunities, weaknesses and areas of concern; identify changes in the OCC organization and operations that would improve performance; evaluate the effectiveness of current metrics in measuring OCC performance and stimulating improvement in critical areas; provide input into the development of Individual Development Plans; reward and recognize OCC

staff members; adjust OCC staff Performance Criteria and Expectations; and prepare the OCC Annual Plan for the next FY.

Summary Management Review (SMR). In accordance with the Federal Manager's Financial Integrity Act (FMFIA), OCC conducts an annual SMR, which feeds into both the CH Manager's FMFIA report and the General Counsel's FMFIA report. The SMR includes an assessment of:

- 1) Open areas of concern or issues, root causes, and commitments from prior years.
- 2) The existence of procedures for legal and administrative functions.
- 3) The adequacy of OCC management controls for significant legal and administrative functions.
- 4) The adequacy of OCC management controls with respect to specific functions, crosscutting areas, "Hot Topic" areas, and other Departmental challenges encompassed by the OCC's responsibility that are identified by internal and external audit organizations.

**Performance Measures - Balanced Scorecard**

Key:	<span style="background-color: cyan;">■</span> Office of Chief Counsel Metric
	<span style="background-color: yellow;">■</span> Contributes to CH X-Cut Measure
	<span style="background-color: green;">■</span> Both
	Special Office of Chief Counsel Objective

**1. Mission/Budget – Actively support OneSC**

Objective	Measure	Target
1.1 Implement OneSC project, phase 1 after approval	Compliance with System Integration Timelines	Accomplish transfer/archive of Oakland Office of Science legal and Freedom of Information Act/Privacy Act documents related to Berkeley Site Office and Stanford Site Office by end of Fiscal Year 04.
1.2 Support the Office of Science's re-competitions of expiring Office of Science Management and Operating contracts.	Timeliness, Quality, and Completeness of Legal Support to Office of Science Management and Operating Contract Source Evaluation Boards.	Provide leadership and support to the Office of Science Acquisition Strategy Team.
		Provide leadership and support in the competitive procurement of the Lawrence Berkeley National Laboratory contract (as assigned).
		Provide leadership and support to the development of model Request for Proposal for Office of Science Management and Operating Source Evaluation Boards
1.3 Lead and/or participate in OneSC phase2 (re-engineering)	Active Participation on OneSC Re-engineering Teams	At least two members of the Office of Chief Counsel will be OneSC Phase 2 Team Members

**2. Employee and Organization Capacity - Advance the strategic management of human capital within Chicago Operations Office consistent with the President's Management Agenda**

Objective	Measure	Target
2.1 Link individual performance plans to Department of Energy and Chicago Operations Office goals and priorities	Percentage of Annual Plan initiatives that are represented as measures and initiatives in individual performance plans. (XC)	70-75% of Performance expectations linked to the Chicago Operations Office Strategic Priorities.
	Percentage of on-time performance reviews.	85% of mid-year and final performance reviews completed by deadline.
		100% of late performance reviews completed within 10 days after deadline.
2.2 Implement succession planning	Development of succession plan for the Office of Chief Counsel	Office of Chief Counsel approval of plan by June.

2.3 Implement approved staffing plans	Hiring and assimilation of new staff	Hire three attorneys and establish performance expectations within 45 days of hire.
2.4 Develop delivery plan for providing Human Resources services to HQ Office of Science.	Provision of support as requested.	Rating of satisfied or highly satisfied by Office of Management and Administration-Human Resources Services on timeliness and quality of legal service.
2.5 Develop change management process for OneSC	Participation in Change Management Process Teams	Participation by at least one Office of Chief Counsel member
2.6 Advance quality/competency and satisfaction of Office of Chief Counsel personnel	Timely and complete review and update of Individual Development Plans, including identification of the Chicago Operations Office attorneys with Continuing Legal Education requirements and qualifying training.	100% of Office of Chief Counsel Individual Development Plans by 9/30/04.
	Average grade on all Fiscal Year 2004 audits, reviews, appraisals, and assessments (including self-assessments).	Average grade of "B" (80%) or better.
	Percentage of employees achieving 40 hours of training in Fiscal Year 04.	80%
	Percentage of Office of Chief Counsel leadership that achieves required training.	100%
	Support of the Chicago Operations Office development, distribution, and evaluation of employee satisfaction survey. (XC)	90% of Office of Chief Counsel employees respond to satisfaction survey.
	Issue Office of Chief Counsel employee satisfaction survey. (XC)	Issue by June.
	Percentage of Employees Who Have Completed Certification, Re-qualification Requirements. (XC)	100% of Continuing Legal Education requirements satisfied. 75% of discretionary requirements satisfied.
	Office of Chief Counsel employees engaged in activities external to their "normally" assigned spheres of responsibility: number of	Compile Fiscal Year 03 data by the end of February. Determine target within 60 days of compiling the Fiscal Year 03 data.

	employees, assignments, and hours. (XC)	Achieve target.
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**3. Internal Business Processes - Continue integration of Chicago Operations Office Strategic Management System**

Objective	Measure	Target
3.1 Integrate cross-cutting measures with Annual Plans	Percentage of relevant cross-cutting measures included in the Office of Chief Counsel Annual Plan. (XC)	100%
	Percentage of measures in Annual Plans that directly support Strategic Management System strategic priorities. (XC)	90%
3.2 Manage cost of doing business	Reduction in cost of Office of Chief Counsel business. (XC)	15% reduction in cost of the Office of Chief Counsel's law libraries (e.g., through use of internet) – Approximately \$4,000.
		Minimize number of Office of Chief Counsel's trips through use of teleconferencing and other systems.
3.3 Improve Performance-Based Contracting	Magnitude of Office of Chief Counsel Support to the Development of Timely, Quality, and Complete Chicago Operations Office Performance-Based Management Policies, Procedures, and Guidance.	Provide leadership to and participate on the Chicago Executive Committee, Performance-based Management Subcommittee in order to improve the Chicago Operations Office policies, processes, procedures, etc. regarding the Chicago Operations Office use of performance-based management contracts.
	Timeliness, quality and completeness of legal support in the Negotiation, Administration, and Execution of Office of Science Management and Operating Contracts.	Negotiate and evaluate legal performance measures in three Management and Operating contracts
		Provide leadership and support in the development and negotiation of the Ames contract (December) Provide leadership and support in the development and negotiation of the Argonne National Laboratory contract (September).
	Active support of the Office of Science model contract initiative.	Assure solicitation of Lawrence Berkeley National Laboratory contract meets expectations of model contract.
Assure Lawrence Berkeley National Laboratory contract is negotiated consistent with model contract		

		<p>Assist the Stanford Linear Accelerator Center site office in developing pre-negotiation plan consistent with Card Principles within six months, after the Office of Chief Counsel initiates legal support to the Stanford Linear Accelerator Center site office.</p> <p>The Stanford Linear Accelerator Center contract extension negotiated consistent with model contract principles within six months of Headquarters approval.</p> <p>Submit prenegotiation plan consistent with Card Principles for Brookhaven National Laboratory by 1/1/04.</p> <p>Negotiate the Brookhaven National Laboratory contract extension for 3/31/04 or within three months of Headquarters Authorization.</p>
<p>3.4 Improve Management Decision; Grants; Environment, Safety and Health; and Project Management processes through implementation of enhanced automated systems</p>	<p>Increased Office of Chief Counsel use of the Management Decision Support System as a decision-making tool in conjunction with the implementation of the business line approach as Chicago Operations Office operating model. (XC)</p>	<p>Increase Office of Chief Counsel usage by 10%.</p>
	<p>Percentage of Office of Chief Counsel staff using automated systems available.</p>	<p>80% demonstrate use of Outlook Calendar, Entrust, and other paperless systems.</p> <p>Schedule Entrust refresher training for Office of Chief Counsel staff by 6/1/04.</p>
	<p>Coordination with the Chicago Operations Office Units and Other Department of Energy Elements on Cross-cutting Matters.</p>	<p>No more than three legal issues are not fully or properly coordinated with affected Department elements (Chicago Operations Office management, Office of Science, Office of General Counsel, etc.)</p> <p>Sampling of the Office of Chief Counsel reading files demonstrates 90% of correspondence evidences proper coordination.</p> <p>Five or less non-concurrences by other Chicago Operations Office Units on the Office of Chief Counsel generated documents based on substantive issues.</p>

		Non-concurrences are resolved below the Office of the Manager level in 95% of cases.
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**4. Customers and Stakeholders - Develop and implement a high level customer service ethic**

Objective	Measure	Target
4.1 Implement Fiscal Year 2004 Customer Service Plan	Maintain Open Lines of Communication with the Office of General Counsel.	Provide timely and complete reports of significant legal matters to GC-1 and GC-62 (weekly, biweekly, and monthly, as appropriate).
	Continue as the Department of Energy Center of Excellence for Intellectual Property. (XC)	90% of Department of Energy Field Element Customers express satisfaction with the Chicago Operations Office-Intellectual Property Law Division.
	Responsiveness to Requests from the Office of General Counsel and Other Department of Energy Elements.	90% of submittals are timely and accurate, including but not limited to the Federal Manager's Financial Integrity Act reports, contingent liability reports, responses to discovery requests, and Freedom of Information Act reports.
4.2 Support Chicago Operations Office customer outreach program	As requested, work with internal customers to identify new business opportunities and measure the subsequent percentage of increase in program funds. (XC)	90% of internal customers responding indicate rating of satisfied or highly satisfied on timeliness and quality of legal service.
	Timelines, quality and completeness of intellectual property support in the negotiation and administration of Idaho Operations Office Management and Operating Contracts	Provide intellectual property support for the Idaho National Engineering and Environmental Laboratory Management and Operating contract Solicitation
		Provide intellectual property support for the Idaho Cleanup Project Solicitation

4.3 Develop performance expectations (related to quality and timeliness) with customers and evaluate performance.	Negotiation of expectations with Berkeley Site Office and Stanford Site Office	By June
	Support of Source Evaluation Boards and Panels in the Solicitation, Selection, and Award of Contracts, Cooperative Agreements and Grants. (XC)	90% of Board/Panel Chairmen responding indicate satisfaction with Office of Chief Counsel support.
	Support of Administration of Existing Agreements (XC)	90% of Contracting Officers and Contract Specialists responding indicate satisfaction with Office of Chief Counsel support.
	Timeliness of Legal Review Services	90% complete within Customer's deadline.
	Customer satisfaction with Office of Chief Counsel services. (XC)	90% of Customers surveyed indicate they are "satisfied" or "very satisfied" with Office of Chief Counsel services.
	Timeliness in Review and Approval of Work for Others, Cooperative Research and Development Agreements, Joint Work Statements, etc.	Average Review Time 3 days or less. 90% of Reviews under 3 days.
4.4 Support Technology Transfer	Protect the Government's interest in Intellectual Property, and Improve the Potential for Further Development and Commercialization.	At least 20 patent applications filed.
		At least 525 inventions processed to final disposition.
4.5 Implement Effective Ethics Oversight Program.	Timely and accurate ethics advice provided to Chicago Operations Office staff after full and accurate disclosure of the facts by the responsible employee(s).	No more than 2 errors.
	Timely Office of Chief Counsel recommendation to cognizant supervisors of inducement for subordinates failing to meet annual Standard Form 450 requirement.	Timely means no less than 1 week prior to deadline.
	Timely review and guidance.	100% of SF 450s are reviewed and guidance (if necessary) provided within 30 days of receipt.
	Chicago Operations Office staff subject to the requirement, receive mandatory ethics training or remedial action is recommended.	95% training by the Office of General Counsel's established due date. 100% by 10 working days after due date, or remedial action is recommended.

<p>4.6 Championing and Monitoring Chicago Operations Office-Freedom of Information Act and Privacy Act Programs.</p>	Percentage of Chicago Operations Office on-time responses.	85% within 20 business days of acknowledgment or extension deadline.
	Chicago Operations Office average processing time of overdue responses.	85% within additional 20 business days of deadline.
		Maintain the Chicago Operations Office average processing time of overdue responses at 20 days.
	Accessibility and Utility of Office of Chief Counsel Electronic Information Management Systems.	Freedom of Information Act and Privacy Act guidance timely posted on the Office of Chief Counsel Web Site and Chicago Operations Office Bulletin Board.
		e-FOIA and Office of Chief Counsel web sites enhanced to provide efficient, timely and accurate information.
		100% of quarterly status reports entered into Litigation Management Tracking System by deadline.
		In no more than three instances, cost information entered into Litigation Management Tracking System more than five working days after Contracting Officer Representative approval.
	Quality of legal support to Freedom of Information/Privacy Act Officer.	90% of denials upheld by Office of Hearings and Appeals.
	Percentage of Office of Chief Counsel on-time responses.	95% within 20 business days of acknowledgment or extension deadline.
Average Processing Time of Overdue Office of Chief Counsel Responses.	95% of late responses within additional 20 days.	

**Resource Requirements**

<b>Resource</b>	<b>Actual FY 2003</b>	<b>Projected FY 2004</b>
FTE's	25	28 <sup>1</sup>
Salaries, Benefits, Awards	\$2,544,507.00	\$ (dollar equivalent for 28 FTEs)
Travel	\$ 23,848.68	\$ 39,416.00
Training	\$ 1,935.00	\$ 13,000
Support Services	\$ 0.00	\$ (dollar equivalent for 2 FTE)
Other Contractual Services	\$ \$118,706.00	\$ 152,000.00
<b>Total Funding Required</b>	<b>\$</b>	<b>\$</b>

**Staffing**

OCC is currently allocated twenty-eight (28) FTEs based on its FY03 workforce analysis and resultant staffing plan. This is the minimum FTE allocation necessary to assure continued quality, cost-effective, and timely legal services. OCC has recently hired an Assistant Chief Counsel (GL) and a Senior Patent Attorney to provide the full-range of legal services to Berkeley and the Stanford Linear Accelerator Center (SLAC) site offices and is currently recruiting for a GS-12 to 14 procurement attorney.

OCC has been providing just over nine (9) FTEs of support to the five (5) CH area offices; with the additional responsibility associated with the two (2) SC site offices on the west coast, support will increase to a minimum of eleven (11) FTEs. This represents 5.4 GL FTEs (or slightly more than 50% of its staff), and almost 5.5 IPL FTEs. Office of Acquisition and Assistance is the second most significant customer of OCC services, at 3.25 FTEs. The challenge to GL will be to manage this additional customer workload with 1/3 of its attorneys under significant time constraints: the Deputy Chief Counsel due to Senior Executive Service program responsibilities, one staff attorney due to executive development program requirements, and one staff attorney on indefinite sick leave.

IPL FTEs are allocated along two general functional lines: invention management and patent prosecution (7 FTEs); and procurement, technology transfer, general policy, and Intellectual Property (IP) advice and counsel (8 FTEs). Support for CH business groups and other customers generally would include both of these two functional areas.

**Travel**

OCC received \$23,849 for travel in FY03. For travel in support of the negotiation of the Brookhaven National Laboratory (BNL) M&O contract, OCC received an additional \$15,000, although the majority of this money was not spent due to HQ mandated delays. Approximately \$5,100 was funded through various offices, including the Office of Program and Project Management for the Mixed Oxide Fuel program; Office of Nuclear Energy, Science and Technology for the Competition of the Idaho contract; the Princeton Area Office, and Environmental Measurements Laboratory (EML). IPL also receives travel funding from several of its customers. In FY03, about \$5,100 was provided to fund IPL travel to the Fermi Area Office, Idaho Operations Office, Golden Field Office, Oak Ridge Operations Office and HQ. OCC has requested approximately \$22,000 (for first six months of FY04) from CH for travel for FY04 and a total of approximately \$39,500 for the entire year. This amount is needed to increase face-to-face contact with customers, including BNL, EML, Princeton Plasma Physics Laboratory (PPPL), Ames, Berkeley Site Office, Stanford Site Office, and to participate in

<sup>1</sup> OCC's FY04 Staffing Plan indicates the need to hire a Program Analyst; however, an allocation for this position has not been received from CH management. As of February 8th, OCC will have 27 FTEs on board.

contract negotiations with M&O contractors at Brookhaven, Fermilab, Berkeley, and SLAC. The current allocation for FY04 is \$20,240.

### **Training**

During FY03, CH training funds were limited. Since approval was done on a case-by-case basis, and was specifically dedicated to internal requirements, such as continuing education and attorneys' meetings not directly attributable to customer support; or directly related to the individual's position, OCC only spent \$1,935 on training. An increase to \$20,000 is believed to be needed to allow for adequate and meaningful training for OCC staff. Current CH planning is to maintain all training funds on a centralized basis.

Not only inflation, but more importantly, the workload from newly-assigned SC site offices, will determine amounts necessary for FY05 through FY07.

### **Support Services**

OCC has been operating with a decreased administrative support staff and no contractor administrative support for several years. Funding for contractor data entry support (2 FTEs) is needed by IPL to provide for timely data entry and maintenance of an updated and accurate database. Funding for contractor administrative support may be needed to address the anticipated retirement of the GL lead secretary, who provides administrative support services to the Chief Counsel and Deputy Chief Counsel for GL. Administrative support for the two attorneys co-located with the Brookhaven Area Office, and attorneys co-located with the western SC site offices is anticipated to be provided under agreements with the Site and Area Managers.

### **Other Contractual Services**

IPL obtains drafting services for the drawings submitted with patent applications through purchase orders. Drawings are priced at a set amount per sheet, typically \$350 to \$700 per patent application. IPL spent \$4570 during FY03 and will need approximately \$6,000 for FY04 for the three purchase orders for drafting services.

IPL received \$90,000 in FY03 funding from GC-62 for outside law firm contracts. IPL expended \$84,000 during FY03 and will need an increase to \$125,000 to exceed its goal of 20 patent applications filed for FY04. GC-62 has indicated that funds will be made available to CH for FY04 on a case-by-case basis.

During FY03 OCC spent \$26,706 on library services and the current estimate cost for FY04 is \$27,800, excluding subscription services for OCC personnel on the west coast. General office supplies cost \$1673 for FY03 and OCC expects to spend the same amount in FY04.