

SELECTION AND OVERSIGHT OF ATTORNEYS DEFENDING  
CLAIMS AGAINST THE STATE

LOUISIANA DEPARTMENT OF JUSTICE

OFFICE OF RISK MANAGEMENT



PERFORMANCE AUDIT SERVICES  
ISSUED MAY 27, 2020

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LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

May 27, 2020

The Honorable Patrick Page Cortez,  
President of the Senate  
The Honorable Clay Schexnayder  
Speaker of the House of Representatives

Dear Senator Cortez and Representative Schexnayder:

This report provides the results of our audit of the Louisiana Department of Justice (DOJ) and the Office of Risk Management (ORM). The purpose of this audit was to evaluate DOJ's and ORM's processes for selecting and overseeing attorneys defending claims against the state.

Overall, we found DOJ and ORM need to strengthen their processes. DOJ, for instance, has not developed formal criteria to help it determine whether to use contract attorneys or department attorneys to defend claims against Louisiana. DOJ's goal is to use in-house attorneys for 85 percent of cases because it is more cost-effective. However, without formal and documented criteria to help it decide when to hire contract attorneys, the Department could end up spending more money than it has to because in-house staff might have been able to do the work at a lower cost.

In addition, once DOJ decides to hire a contract attorney, it does not have formal published procedures for choosing contract attorneys, as required by state law. As a result, the Department cannot ensure its selection process is fair and free from bias. DOJ also does not use past performance evaluations when it selects contract attorneys or ensure that those attorneys meet minimum qualifications.

In ORM's case, the office has not developed formal criteria to govern its process for concurring with DOJ on contract attorneys. Without such criteria, ORM cannot ensure its concurrence process, which is required by state law, is transparent and unbiased. Having formal criteria to help determine why it would independently agree or disagree with DOJ's selection of contract attorneys is important because ORM is ultimately responsible for paying claims against the state and the attorneys who defend them.

ORM also does not have an adequate review process in place to ensure its third-party administrator, Sedgwick, effectively monitors the work of contract and DOJ attorneys. We found Sedgwick did not ensure that DOJ and contract attorneys complied with all case handling

The Honorable Patrick Page Cortez,  
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guidelines and billing procedures. As a result, ORM may have paid attorneys for work that was not completed or necessary. For example, ORM paid more than \$18,000 to contract attorneys from fiscal year 2016 through 2019 for work on legal motions that were not documented in the case files as required.

This report is a follow-up to an audit of DOJ and ORM we performed in 2000, and many of the issues we discuss here are the same or similar to ones we cited previously. The report contains our findings, conclusions, and recommendations. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the Louisiana Department of Justice and the Office of Risk Management for their assistance during this audit.

Respectfully submitted,

A handwritten signature in blue ink that reads "Daryl G. Purpera". The signature is written in a cursive style with a large initial "D".

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/aa

DOJ ORM

# Louisiana Legislative Auditor

Daryl G. Purpura, CPA, CFE



## Selection and Oversight of Attorneys Defending Claims Against the State

Louisiana Department of Justice and Office of Risk Management

May 2020

Audit Control # 40190019

## Introduction

We evaluated the Department of Justice's (DOJ) and the Office of Risk Management's (ORM) processes for the selection and oversight of attorneys assigned to defend certain claims against the state. These processes are important to help ensure that qualified attorneys with no conflicts of interest are selected to defend the state from potentially adverse court judgments and payments to claimants. Strong processes are also important so that ORM can ensure payments to contract attorneys are reasonable and based on actual work performed. We conducted this audit to follow up on issues and recommendations identified in a performance audit report issued in December 2000.<sup>1</sup> In addition, risk factors related to these processes came to our attention recently that further warranted this work.

The three types of civil **claims** that ORM administers include:

- (1) tort claims, which are civil claims involving a breach of duty resulting in harm to the claimant, such as injuries, financial loss, invasion of privacy, or emotional distress;
- (2) workers' compensation claims; and
- (3) claims arising from property damage.

State law<sup>2</sup> requires DOJ to defend tort and contract claims against the state, but also allows DOJ to appoint private attorneys.<sup>3</sup> DOJ's goal is to use in-house attorneys to defend 85% of claims. According to state law,<sup>4</sup> contract attorneys selected by DOJ must meet minimum qualifications such as having a license to practice law in Louisiana, possession of malpractice insurance, and no conflicts of interest.<sup>5</sup> State law<sup>6</sup> requires the Commissioner of Administration, through ORM, to concur in all DOJ appointments of contract attorneys for claim defense. These responsibilities are outlined in an Interagency Agreement (IAT) between ORM and DOJ that is signed every fiscal year.

According to state law,<sup>7</sup> ORM is the administrator for the state's risk management program. ORM manages all state insurance covering property and liability exposure as well as all tort claims against the state, with specific responsibilities that include:<sup>8</sup>

<sup>1</sup> Our 2000 performance audit can be found here:

[https://lla.la.gov/PublicReports.nsf/86256F9C007A906786256FD400720E6A/\\$FILE/408d488c.PDF](https://lla.la.gov/PublicReports.nsf/86256F9C007A906786256FD400720E6A/$FILE/408d488c.PDF).

<sup>2</sup> Revised Statute (R.S.) 49:257 (A)

<sup>3</sup> R.S. 49:258

<sup>4</sup> R.S. 49:258 (1)

<sup>5</sup> See Appendix D for the Minimal Qualifications as published in the *Louisiana Bar Journal*.

<sup>6</sup> R.S. 39:1533 (B)

<sup>7</sup> R.S. 39:1528 (B)

<sup>8</sup> R.S. 39:1535 (A) and (B)

- Providing claims adjustment services through either employees or contractual services
- Assisting counsel in the defense of claims against the state
- Investigating claims

ORM contracts with a third-party administrator, Sedgwick, for claims adjusting services.<sup>9</sup> These services include investigating claims, reviewing defense attorney billings, and generally managing the claims process. Sedgwick also ensures that defense attorneys comply with ORM’s Case Handling Guidelines and Billing Procedures, which require defense attorneys to submit budgets, case assessments, and billing documentation for each claim defended, or case. Sedgwick is required by ORM to maintain all necessary claim documentation in an electronic claim system called Juris and to prepare a performance evaluation of the defense attorney assigned to each case. ORM oversees Sedgwick through a performance monitoring program that includes monthly audits. During fiscal years 2017 through 2019, ORM paid Sedgwick approximately \$44.9 million to administer the state’s claims.

During fiscal years 2017 through 2019, ORM administered 19,700 active claims<sup>10</sup> that cost the state more than \$407 million. General Liability claims had the highest payments, with 5,067 claims costing approximately \$184 million (45.3%). Exhibit 1 shows the number and cost of claims by the claim type. Payments include case expenses such as payments to attorneys, court costs, and expert witness review/consultation testimony; loss payments to claimants; and medical payments to providers for medical services.

<b>Exhibit 1 Case and Payment Information Fiscal Years 2017 through 2019</b>				
<b>Claim Type</b>	<b>Number of Cases</b>	<b>Percent of Cases</b>	<b>Payments*</b>	<b>Percent of Payments</b>
Automobile	3,603	18.3%	\$42,354,115	10.4%
General Liability	5,067	25.7%	184,302,824	45.3%
Property	1,815	9.2%	9,444,797	2.3%
Workers’ Compensation	9,215	46.8%	170,909,787	42.0%
<b>Total</b>	<b>19,700</b>	<b>100.0%</b>	<b>\$407,011,523</b>	<b>100.0%</b>
* Payments include reimbursements and recoveries.				
<b>Source:</b> Prepared by legislative auditor’s staff using data from ORM.				

<sup>9</sup> Sedgwick has been ORM’s third-party claims administrator since August 1, 2015.

<sup>10</sup> Active claims are those that ORM has made one or more payments on during fiscal years 2017 through 2019.

The objective of this audit was:

**To evaluate DOJ's and ORM's processes for the selection and oversight of attorneys defending claims against the state.**

Our results are summarized on the next page and discussed in detail throughout the remainder of the report. Appendix A contains DOJ's response to this report, Appendix B contains ORM's response to this report, and Appendix C details our scope and methodology. In addition, Appendix D depicts the Minimal Qualifications as published in the *Louisiana Bar Journal*, and Appendix E summarizes the findings and recommendations from our 2000 performance audit.

## Objective: To evaluate DOJ's and ORM's processes for the selection and oversight of attorneys defending claims against the state.

Overall, we found that DOJ and ORM need to strengthen their processes related to the selection and oversight of attorneys who defend claims against the state. Specifically, we identified the following issues:

- **DOJ has not developed formal criteria for determining whether to use contract attorneys or DOJ attorneys to defend claims against the state. DOJ's goal is to use in-house attorneys for 85% of cases because it is more cost-effective than using contract attorneys.** Without formal and documented criteria to help decide when to use contract attorneys, the state may spend funds on contract attorneys for legal work that could be performed by existing staff at a lower cost.
- **Once DOJ decides to use a contract attorney to defend a claim, it does not have formal published procedures for selecting which contract attorney will be assigned, as required by state law. As a result, DOJ cannot ensure that its selection process is fair and free from bias.** A transparent process would protect DOJ from the appearance of bias in its attorney selection process, especially since attorneys and their law firms may contribute to elected officials' campaigns. In addition, DOJ does not use past performance evaluations when selecting contract attorneys or ensure that those attorneys meet minimum qualifications.
- **ORM has not developed formal criteria governing its process for concurring with DOJ on the selection of contract attorneys.** As a result, ORM cannot ensure its concurrence process, which is required by state law, is transparent and unbiased. Although ORM stated that it rarely disagrees with DOJ's appointment, it is important that ORM develop formal criteria to help determine why it would independently agree or disagree with DOJ's selection of contract attorneys since ORM is ultimately responsible for paying claims against the state and the attorneys who defend them. A transparent process would protect ORM from the appearance of bias in its concurrence process.
- **ORM does not have an effective review process to ensure that its third-party administrator, Sedgwick, thoroughly monitors the work of contract and DOJ attorneys.** We found that Sedgwick did not ensure that contract and DOJ attorneys complied with all case handling guidelines and billing procedures. As a result, ORM may have paid attorneys for work that was not completed or necessary. For example, ORM paid more than \$18,000 from fiscal year 2016 through 2019 to contract attorneys for work on legal motions that were not documented in the case files as required.



Many of these issues are the same or similar to issues we cited in our 2000 performance audit of DOJ and ORM, as summarized in Appendix E. These issues are explained in more detail throughout the remainder of the report along with recommendations to assist DOJ and ORM to strengthen their processes for selecting and overseeing attorneys to defend the state.

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**DOJ has not developed formal criteria for determining whether to use contract attorneys or DOJ attorneys to defend claims against the state. DOJ’s goal is to use in-house attorneys for 85% of cases because it is more cost-effective than using contract attorneys. Without formal and documented criteria to help decide when to use contract attorneys, the state may spend funds on contract attorneys for legal work that could be performed by existing staff at a lower cost.**

DOJ has the statutory authority<sup>11</sup> to appoint private attorneys to defend claims or to use its in-house attorneys. One performance indicator of DOJ’s Litigation Division is to better utilize the funds available to ORM for legal expenses by handling at least 85% of new risk litigation cases in-house. According to DOJ, it is more cost-effective for the state to use in-house attorneys, and during fiscal years 2017 through 2019, DOJ assigned 2,767 (85.9%) of 3,218 new cases to in-house attorneys.<sup>12</sup> However, DOJ has not developed formal criteria for determining whether to use contract versus in-house attorneys.

According to DOJ, it authorizes the use of contract attorneys when in-house staff does not have the legal expertise to defend certain claims or when a claim occurs in a part of the state where DOJ has no staff. However, DOJ has not developed formal criteria or documented why it chooses to use a contract attorney versus in-house staff. In our 2000 audit, we recommended that DOJ develop policies and procedures for governing its decision to use contract versus DOJ attorneys and that the policies include a requirement for conducting a cost-benefit analysis and retaining documentation supporting its decisions. Although DOJ partially agreed, it has not implemented this recommendation as of March 2020. Formal and documented criteria, such as the examples in the textbox to the right, would help ensure that DOJ’s assignment of cases follows a consistent decision-making process. In addition, DOJ should develop criteria and document why it reassigns cases from DOJ attorneys to contract attorneys. As of June 30, 2019, DOJ had reassigned 208 (3.6%) of 5,706 cases<sup>13</sup> from DOJ to contract attorneys and 28 (0.5%) cases from contract attorneys to DOJ.

**Examples of criteria for selecting contract attorney versus DOJ attorney include:**

- Geographical location
- Expertise needed
- DOJ has a conflict of interest
- Attorney has a companion or similar case
- DOJ caseload too high
- Requested by agency being sued

Source: LLA audit (2000)

<sup>11</sup> R.S. 49:258

<sup>12</sup> [https://www.doa.la.gov/opb/pub/FY20/SupportingDocument/04B\\_Office\\_of\\_the\\_Attorney\\_General.pdf](https://www.doa.la.gov/opb/pub/FY20/SupportingDocument/04B_Office_of_the_Attorney_General.pdf)

<sup>13</sup> These are cases that had attorneys assigned as of July 1, 2019.

**Contract attorneys are paid an hourly rate based on years of experience, while DOJ is paid based on a yearly amount budgeted in advance. From fiscal years 2017 through 2019, the state paid DOJ and contract attorneys approximately \$94 million.** As shown in Exhibit 2, contract attorneys appointed by DOJ are paid by ORM in accordance with hourly rates<sup>14</sup> based on years of experience regardless of the type of litigation being defended. However, ORM’s payments to DOJ for cases defended by in-house attorneys are based on a yearly amount budgeted in advance in the IAT (interagency agreement) and not on actual legal services provided. Each fiscal year, DOJ bills ORM for the cost of its in-house attorneys and all other legal expenses in 12 equal monthly installments based on the prospective budget for its entire Risk Litigation Division<sup>15</sup> as specified in the yearly IAT between DOJ and ORM. For example, the IAT for fiscal year 2020 states that each month ORM shall pay DOJ an amount equal to one-twelfth of \$18,634,108 for services performed by DOJ.

Exhibit 2 Hourly Pay Rates for Contract Attorneys Appointed by DOJ Fiscal Year 2020	
Position	Hourly Rate
Attorney – more than ten (10) years of experience	\$175
Attorney – 5 to 10 years of experience	\$150
Attorney – less than 5 years of experience	\$125
Paralegal	\$50
Law Clerk	\$40
Source: Prepared by legislative auditor’s staff using information provided in fiscal year 2020 IAT between ORM and DOJ.	

Exhibit 3 summarizes how much contract attorneys billed versus how much DOJ was paid for claims defended during fiscal years 2017 through 2019.

Exhibit 3 Payments to Attorneys by Type Fiscal Years 2017 through 2019		
Attorney Type	Attorney Payments	Percent of Payments
Contract	\$41,969,065	44.5%
DOJ	52,257,933	55.5%
<b>Total</b>	<b>\$94,226,998</b>	<b>100%</b>
Source: Prepared by legislative auditor’s staff using ORM data.		

**Recommendation 1:** DOJ should develop formal criteria for determining whether to assign contract attorneys versus DOJ attorneys to defend claims against the state.

**Summary of DOJ Management’s Response:** DOJ disagrees with this recommendation but did not provide a reason in its response. See Appendix A for DOJ’s full response.

**Recommendation 2:** Once it develops formal criteria, DOJ should document what criteria was used in its decisions to assign contract attorneys versus DOJ attorneys to defend claims against the state.

<sup>14</sup> Unless DOJ and ORM jointly approve special rates, which are rare and typically approved only for complex or high-profile cases. ORM estimates that these rates are approved once or twice every three months.

<sup>15</sup> The Risk Litigation Division budget does not include DOJ costs associated with litigation defense for LSU which is not under ORM’s risk program.

**Summary of DOJ Management's Response:** DOJ disagrees with this recommendation but did not provide a reason in its response. See Appendix A for DOJ's full response.

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**Once DOJ decides to use a contract attorney to defend a claim, DOJ does not have formal published procedures for selecting which contract attorney will be assigned, as required by state law. As a result, DOJ cannot ensure that its selection process is fair and free from bias. In addition, DOJ does not use past performance evaluations when selecting contract attorneys or ensure that those attorneys meet minimum qualifications.**

After DOJ decides that a claim should be defended by a contract attorney, it assigns the case to one of the 114<sup>16</sup> law firms that employ at least 174 attorneys that DOJ has determined meet the minimum qualifications established in law that are published annually in the *Louisiana Bar Journal*.<sup>17</sup> The minimum qualifications include a license to practice law in the state of Louisiana, possession of malpractice insurance, no conflicts of interest, as well as other qualifications outlined in Appendix E. State law also requires that these assignments be made in accordance with a written appointment procedure that is also published annually in the *Louisiana Bar Journal*. However, we found that DOJ has not established written appointment procedures that include formal criteria for determining which contract attorneys to assign. In addition, DOJ is not consistently ensuring that attorneys it assigns meet minimum qualifications prescribed by the state.

**DOJ has not established or published appointment procedures for selecting contract attorneys, as required by law.** According to DOJ, it determines which contract attorneys to select based on its Risk Litigation Division Director's personal knowledge of the skills and experience of private attorneys in the state. Although DOJ documents the appointment itself on the *Attorney General Appointment Form* that designates DOJ approval and ORM concurrence, it does not document the reasons why it chose one contract attorney over another. Development of appointment procedures that document why certain contract attorneys were chosen over others and publishing these procedures in the *Louisiana Bar Journal* as required by law would allow all attorneys to seek the right to represent the state and help DOJ ensure that its selection process is fair and free from bias. Our 2000 audit also found that DOJ did not document why it selected particular contract attorneys over others.

**A more transparent process would protect DOJ from the appearance of bias in its attorney selection process.** Transparency is especially important given that contract attorneys and their firms may contribute to the campaigns of elected officials such as the Attorney General

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<sup>16</sup> As of April 2020

<sup>17</sup> R.S. 49:258 (1)

who oversees DOJ. Establishment of published appointment procedures would allow DOJ to assure the public that its contract decisions are not biased or based on favoritism.

**The IAT requires that Sedgwick prepare performance rating sheets for every case on both DOJ and contract attorneys; however, we found no evidence that DOJ used these evaluations in its contract selection decisions.** The performance rating sheets classify attorney performance as excellent, satisfactory, or unsatisfactory based on the timely provision of case assessments, accurate budgets, compliance with billing procedures, and other criteria. According to DOJ, it uses the results of past evaluations of contract attorneys provided by ORM when determining whether to assign contract attorneys additional cases. While we saw completed attorney performance evaluations in the attorney files we reviewed, DOJ does not document how it uses these evaluations in the selection process nor could it provide any evidence that it did so. During our review of claims documentation, we saw an instance where Sedgwick rated a contract attorney on an evaluation as “unsatisfactory,” commenting that the attorney “provided no reports and was not proactive in resolving this matter.” However, DOJ assigned this attorney a new case to defend the following year. If DOJ established a process to formally document that the past performance of contract attorneys was considered in the selection process, it could better ensure that it is not appointing contract attorneys who have failed to perform satisfactorily when defending prior claims for the state.

**DOJ does not ensure that the contract attorneys it selects are in compliance with all minimum qualifications.** According to DOJ, it requests that all prospective contract attorneys provide firm/attorney resumes, Martindale-Hubbell ratings,<sup>18</sup> malpractice insurance declaration sheets, and lists of pending claims/suits filed by either the prospective firm/attorney or by the state against the prospective firm/attorney (see Appendix D for all required minimum qualifications). Although these documents support compliance with some provisions of the minimum qualifications, they do not support compliance with other provisions such as evidence of admittance to practice law in Louisiana, experience of practicing law in Louisiana for three years, the absence of suspensions from the Louisiana Supreme Court, and no conflicts of interest as provided for in the *Rules of Professional Conduct of the Louisiana State Bar Association*.

DOJ could obtain evidence of admittance to practice law in Louisiana with three years of experience as well as evidence of any suspensions from the Office of Disciplinary Counsel of the Louisiana Attorney Disciplinary Board,<sup>19</sup> either by checking itself or by requiring attorneys to submit documentation. Similarly, DOJ could require that attorneys use a standard form to certify that they are free from conflicts of interest. In addition, since some qualifications can be waived,<sup>20</sup> DOJ should document any waivers from the minimum qualifications as approved by DOJ and ORM and the reasons for the waivers.

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<sup>18</sup> Martindale-Hubbell Peer Review Ratings recognize lawyers for their legal ability and ethical standards and are used by individuals seeking legal counsel, as well as attorneys looking to refer a colleague, to identify, evaluate, and select lawyers.

<sup>19</sup> The Louisiana Attorney Disciplinary Board is a statewide agency established by the Louisiana Supreme Court to administer the lawyer discipline and disability system. The agency protects the public by investigating complaints of lawyer ethical misconduct and making recommendations to the Supreme Court when discipline is warranted.

<sup>20</sup> According to its minimum qualifications, DOJ has the authority to waive some of the requirements, including the requirement for a Martindale-Hubbell rating of “distinguished” or better and the requirement to use an electronic

We also found that some contract attorneys did not provide all required documentation to show they met the minimum qualifications, and DOJ did not always require attorneys to submit updated documentation to show they continued to meet the qualifications after their initial appointment. As a result, DOJ cannot ensure that contract attorneys assigned to defend the state met and maintained compliance with minimum qualifications while defending all state claims. Our 2000 audit also found that DOJ maintained little documentation showing that contract attorneys met minimum qualifications.

Specifically, we reviewed files for 23 contract attorneys who defended 30 claims during fiscal years 2017 through 2019 to determine whether DOJ received all requested documentation or if this documentation was updated for new case appointments. Our review showed the following:

- All 23 (100%) files contained malpractice insurance declaration sheets showing coverage of \$1 million per claim for the year they were first appointed to defend the state; however, only four (17.4%) of 23 files contained declaration sheets for current annual malpractice insurance policies.
- Twelve (52.2%) of 23 files did not have documentation supporting the required Martindale-Hubbell ratings of “distinguished” or better, or evidence that this requirement had been waived. Of the 11 files with Martindale-Hubbell ratings, nine (81.8%) contained ratings from 2011 or earlier.
- Of the 20 files that contained affidavits disclosing pending claims by the state against the attorney or firm,<sup>21</sup> 17 (85.0%) had not been updated since 2012 or earlier. As a result, DOJ may not be aware of all claims the state has pending with attorneys that would render the attorneys disqualified to defend the state at the same time.

**Recommendation 3:** DOJ should develop a written appointment process for selecting contract attorneys and publish it in the *Louisiana Bar Journal* yearly as required by state law.

**Summary of DOJ Management’s Response:** DOJ disagrees with this recommendation and stated that the report does not appreciate the changes in laws that have occurred in the past 20 years nor an understanding of the nuances of defending litigation. See Appendix A for DOJ’s full response.

**LLA Additional Comments:** We considered all relevant laws and the legal citations in the report represent the most current laws and are all currently in effect.

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billing program. DOJ can also waive certain conflicts of interest if they are indirect and if ORM, DOJ, and the represented agency agree.

<sup>21</sup> Attorneys are required to disclose any pending claims filed by or on behalf of any state entity against the attorney or firm, any judgments rendered in favor of any state entity against the attorney or firm, and any outstanding debt owed to the state by the attorney or firm.

**Recommendation 4:** DOJ should establish a process that requires it to formally document that the past performance of contract attorneys was considered in the selection process to better ensure that it is not appointing contract attorneys who have failed to perform satisfactorily.

**Summary of DOJ Management's Response:** DOJ disagrees with this recommendation but did not provide a reason in its response. See Appendix A for DOJ's full response.

**Recommendation 5:** DOJ should develop a process for ensuring and documenting that contract attorneys assigned to defend the state comply with all minimum qualifications, and regularly update this documentation as applicable to ensure continued compliance over time.

**Summary of DOJ Management's Response:** DOJ disagrees with this recommendation and stated that the report incorrectly implies that it is DOJ's obligation to ensure that private legal counsel are free from conflicts; however, the ethical rules that govern attorneys in Louisiana place that burden squarely upon the private counsel, not DOJ. Despite this, DOJ stated that it does as much due diligence as possible to ensure conflict free counsel and has and will continue to remove such conflicts by whatever means are available and effective. See Appendix A for DOJ's full response.

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**ORM has not developed formal criteria governing its process for concurring with DOJ on the selection of contract attorneys. As a result, ORM cannot ensure its concurrence process, which is required by state law, is transparent and unbiased. Although ORM stated that it rarely disagrees with DOJ's appointment, it is important that ORM develop formal criteria to help determine why it would independently agree or disagree with DOJ's selection of contract attorneys since ORM is ultimately responsible for paying claims against the state and the attorneys who defend them.**

State law<sup>22</sup> requires ORM to concur on all DOJ appointments of contract attorneys, which is documented on the *Attorney General Appointment Form* with the signature of the state's Risk Director. However, ORM does not have formal criteria to help determine whether to concur with DOJ's attorney selections or documentation to support its decisions to concur on any particular contract attorney appointment. According to ORM, its concurrence with DOJ's attorney selections are based on the need to acquire specialized legal expertise unavailable from in-house DOJ attorneys and the geographic unavailability of DOJ attorneys in certain areas of the state

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<sup>22</sup> R.S. 49:258 (1)



where claim litigation occurs. According to ORM, while it occasionally has concerns with DOJ's initial appointments, it works with DOJ throughout the selection process to resolve any issues. As a result, ORM has never had to formally withhold concurrence on DOJ appointments. However, it is important that ORM develop formal criteria to help determine why it would independently agree or disagree with DOJ's selection since it is ultimately responsible for paying claims against the state and the attorneys who defend them.

According to ORM, its concurrence decisions incorporate the past performance evaluations of contract attorneys, but since the process is not documented we could not verify that ORM actually reviews these evaluations prior to concurring with DOJ appointments. As a result, ORM cannot ensure that it is transparent and unbiased in its process and consistently and independently concurs with appropriate legal representation to defend the state. While reviewing contract attorney files maintained by DOJ, we found a September 2012 letter in a DOJ contract attorney file from ORM to DOJ stating that ORM would not concur on any future appointments to the firm since the firm contracted directly with a state agency without being appointed by DOJ or having a contract with ORM;<sup>23</sup> however, in November 2015, DOJ subsequently assigned and ORM concurred on an appointment for this firm. A formal process for independently concurring with DOJ contract attorney appointments is necessary to demonstrate that proper due diligence was exercised in ORM's concurrence.

**Recommendation 6:** ORM should develop formal, written criteria that incorporate the review of past performance evaluations when determining whether to concur on DOJ contract attorney appointments, and to document the application of the criteria on each attorney selection.

**Summary of ORM Management's Response:** ORM agrees with this recommendation and stated that although it does utilize criteria to assist in deciding to grant or withhold its concurrence on DOJ's appointment of private legal counsel, it does not document its application on individual concurrences. ORM is reviewing its processes and will formalize criteria and appropriate documentation of attorney concurrences. See Appendix B for ORM's full response.

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<sup>23</sup> Pursuant to R.S. 13:5101 et seq. and R.S. 39:1527 et seq., all claims against the state or a state agency are managed by ORM and defended by DOJ.

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**ORM does not have an effective review process to ensure that its third-party administrator, Sedgwick, thoroughly monitors the work of contract and DOJ attorneys. We found that Sedgwick did not ensure that contract and DOJ attorneys complied with all case handling guidelines and billing procedures. As a result, ORM may have paid attorneys for work that was not completed or necessary. For example, ORM paid more than \$18,000 from fiscal year 2016 through 2019 to contract attorneys for legal motions that were not documented in the case files as required.**

According to the IAT between DOJ and ORM, ORM is responsible for ensuring that contract attorneys and DOJ staff attorneys comply with case handling guidelines and billing procedures and provide required documentation including budgets and case assessments within required timeframes.<sup>24</sup> For instance, case assessments provide Sedgwick with the background information necessary to properly evaluate requests for settlement authority<sup>25</sup> and budgets help ensure legal expenses are properly controlled and approved. In addition, the IAT states that payments will be withheld on all billings submitted that are not in compliance with the guidelines. According to ORM, Sedgwick is responsible as the third-party administrator for ensuring that contract attorneys comply with the case handling guidelines and billing procedures, and that DOJ attorneys comply with the case handling guidelines.<sup>26</sup> If attorneys do not comply with guidelines and procedures then Sedgwick does not have all the information needed to monitor claims to ensure that attorneys are handling them according to IAT guidelines and that legal expenses are properly controlled and approved.

When ORM's contract with Sedgwick started in August 2015, ORM implemented a monthly review process that evaluates Sedgwick's monitoring of attorney activity. ORM's review includes Sedgwick's compliance with instructions for each of the different lines of insurance, such as whether claim liability determinations are accurate or whether claims payments have the proper payee and pay codes. These reviews also examine general file handling and communication between Sedgwick and defense attorneys, but do not specifically test compliance with the case handling guidelines and billing procedures.

**We reviewed 50 cases to determine if attorneys complied with case handling guidelines and found that attorneys did not provide all required documents in the required timeframes.** We reviewed a targeted selection of 20 cases defended by DOJ in-house attorneys and 30 cases defended by contract attorneys<sup>27</sup> to determine whether Sedgwick ensured that

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<sup>24</sup> All guidelines and billing procedures are provided in Attachment C of the IAT as "Case Handling Guidelines and Billing Procedures."

<sup>25</sup> Sedgwick has the authority to approve settlements less than \$25,000 on non-litigated claims. Sedgwick has no settlement authority on litigated claims.

<sup>26</sup> DOJ attorneys do not submit billing invoices to ORM so they are not required to follow the Billing Guidelines in the IAT. DOJ sends an itemization of services rendered that is uploaded to the claim file.

<sup>27</sup> We limited our selection to closed claims that had been litigated and were active between fiscal years 2016 through 2019 when Sedgwick was ORM's third-party claims administrator.



attorneys complied with requirements set forth in the IAT.<sup>28</sup> We found that seven (14.6%) of 48 required defense attorney budgets were missing, and only five (12.2%) of the 41 budgets were submitted within the 60-day deadline.<sup>29</sup> Without these budgets, Sedgwick cannot ensure that legal expenses are properly controlled and approved. In addition, we found that eight (16.7%) of 48 required initial case assessments were missing, and only eight (20.0%) of the 40 assessments were submitted within the 60-day deadline. Without these initial case assessments, Sedgwick does not have the background information necessary to properly evaluate any future requests for settlement authority from the attorneys. The results of our review are summarized in Exhibit 4.

Exhibit 4									
Review of Selected Requirements from Closed Case Files									
Active Between Fiscal Years 2016 and 2019									
Document	Missing		Documents Provided						Total*
	#	%	On Time #	On Time %	Late #	Late %	Cannot Determine #**	Cannot Determine %	
Budget	7	14.6%	5	12.2%	13	31.7%	23	56.1%	48
Initial Case Assessment	8	16.7%	8	20.0%	26	65.0%	6	15%	48
Team Meeting	7	87.5%	1	12.5%	0	-	0	-	8
Six-Month Case Assessment	10	30.0%	5	25.0%	13	65.0%	2	10.0%	30

\*See footnote 28  
 \*\*See footnote 29  
**Source:** Prepared by legislative auditor’s staff using information contained in the Accuity system and provided by ORM.

As shown in Exhibit 4, Sedgwick also cannot determine whether numerous documents were submitted timely because the *Attorney General Appointment Forms* or contract attorney *Counsel’s Acknowledgment and Acceptance of Appointment* forms were missing from the files. While these forms are not specifically required by the guidelines to be in the case files, without them Sedgwick does not know the appointment dates that are necessary to calculate whether documents were submitted timely. Also, the guidelines are not always clear about how deadlines are calculated and submission dates are not always documented. For example, six-month case assessments are due within six months of the date of acceptance of the contract by a contract attorney or within six months of the date of assignment to a DOJ in-house attorney. In addition, documentation is unclear on when a claim is no longer being actively defended and, therefore, the attorney no longer needs to submit further case assessments.

<sup>28</sup> Not all case handling requirements apply to every case. For example, the team meeting requirement was not implemented until January 2018; therefore, attorneys who litigated claims opened prior to this date did not have to comply with this requirement. Also, if cases are closed in less than six months, a six-month case assessment is not required to be submitted. As a result, the population of cases reviewed for each criterion differs.

<sup>29</sup> The due date for submission of the budgets, initial, and six-month case assessments is based on the date the attorney is appointed obtained from the *Attorney General Appointment Form* (DOJ staff attorneys) or *Counsel’s Acknowledgment and Acceptance of Appointment* (contract attorneys). On cases without these documents, we cannot calculate the required timeframe for submission of the budgets, initial, and six-month case assessments.

We also reviewed 30 cases, for which ORM paid contract attorneys \$797,859, to determine whether contract attorneys complied with billing guidelines.<sup>30</sup> We found that Sedgwick did not ensure that contract attorneys complied with all billing requirements and approved payment of more than \$18,000 for legal motions<sup>31</sup> that were not documented in the case files as required. The billing guidelines in the IAT require contract attorneys to comply with specific requirements governing allowable charges and invoice format/submission. We tested 30 cases handled by contract attorneys for compliance with five requirements<sup>32</sup> and found that Sedgwick did not always have the supporting documentation and proper invoice format necessary to adequately review the contract attorney billings, as shown in Exhibit 5.

<b>Exhibit 5 Results of IAT Billing Guidelines Compliance Review 30 Cases Handled by Contract Attorneys</b>	
<b>Requirement Reviewed</b>	<b>Results</b>
Prohibition against billing for clerical services	Contract attorneys complied in 30 (100.0%) of 30 cases
Compliance of travel expenses with state travel regulations	
Billing of attorney travel time at half the normal hourly rate	Contract attorneys submitted invoices with travel time billed at the full hourly rate on four (13.3%) of 30 cases instead of half the hourly rate allowable
Documentation provided to support all legal motions billed	Contract attorneys did not provide documentation for \$18,115 billed for legal motions in seven (23.3%) of 30 cases
Prohibition of “block billing” <sup>33</sup>	Contract attorneys submitted invoices with prohibited “block billing” on four (13.3%) of 30 cases
<b>Source:</b> Prepared by legislative auditor’s staff using information in the IAT and documentation contained in Juris.	

Noncompliance with case handling guidelines and billing procedures occurred because ORM’s current monthly reviews are not sufficient to ensure that Sedgwick is monitoring contract attorneys for compliance with all requirements outlined in the IAT. According to ORM, Sedgwick documents attorneys’ performance through evaluations, which are sent to ORM. However, while ORM stated that it reviews these evaluations as part of its review process, it does not document the reviews so we could not verify that they were performed.

In addition, the evaluations are not comprehensive or specific enough to document compliance with all case handling guidelines. For example, the evaluations do not discuss

<sup>30</sup> The billing procedures apply primarily to contract attorneys since DOJ in-house attorneys do not bill individually for their services. Instead, ORM reimburses DOJ for the cost of its in-house attorneys in equal monthly payments according to the IAT.

<sup>31</sup> Examples include motions for summary judgment, motions to quash, and motions in limine.

<sup>32</sup> The requirements tested do not include all requirements included in the guidelines/procedures but rather requirements that were generally required on all cases and that we could review because they were supported with specific forms used to document compliance.

<sup>33</sup> Block billing refers to the practice of including multiple unrelated tasks in the same line item on an invoice for legal services and is prohibited in the billing procedures. This practice is prohibited because costs for specific activities cannot be separated from each other and reviewers cannot assess the reasonableness of these separate costs.

whether team meetings were performed, whether legal research was fully documented, and only give general ratings (excellent, satisfactory, unsatisfactory) instead of specifying concrete instances of noncompliance. We reviewed the performance evaluations completed by Sedgwick on the contract attorneys of the 30 cases we reviewed and found that Sedgwick rated 26 (86.7%) of the 30 attorneys as excellent and/or satisfactory, and one (3.3%) as unsatisfactory. The remaining three (10%) evaluations were not documented in the Accuity system,<sup>34</sup> so we could not verify that Sedgwick completed them or what the ratings were. However, these ratings were not consistent with the results from our review, which should have been unsatisfactory for any claims that did not follow all guidelines. If ORM were to include compliance reviews of case handling and billing requirements in its monthly performance monitoring process, it could better ensure that Sedgwick is reviewing all case files for all requirements in the IAT.

**Recommendation 7:** ORM should include compliance reviews of case handling and billing requirements in its monthly performance monitoring process to ensure that Sedgwick obtains all required case management and billing documentation from contract attorneys within required timeframes.

**Summary of ORM Management's Response:** ORM agrees with this recommendation and stated that supplementing its current performance monitoring procedures to include specific case management and documentation reviews would be beneficial. ORM has conveyed to Sedgwick management staff that greater attention must be directed to ensuring attorney compliance with the Case Handling Guidelines and Billing Procedures. See Appendix B for ORM's full response.

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<sup>34</sup> Accuity is the electronic billing system used by contract attorneys to submit bills to Sedgwick.



## APPENDIX A: DOJ'S RESPONSE





Jeff Landry  
Attorney General

## State of Louisiana

DEPARTMENT OF JUSTICE  
LITIGATION DIVISION  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

May 7, 2020

Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
1600 North Third Street  
Baton Rouge, Louisiana 70802

*Sent Electronically and via U.S. Mail*

***Re: Response of the Department of Justice to the Performance Audit***

Dear Mr. Purpera:

The Department of Justice thanks you and your staff for the time and effort expended in connection with the Performance Audit pertaining to the Department's Litigation Division. We appreciate the recommendations set forth in the audit report.

However, the Department disagrees with the mischaracterizations of the applicable law and the incorrect statements of the Department's legal obligations which are contained throughout the report. As one such example, the report incorrectly implies that it is the Department's obligation to ensure that private legal counsel are free from conflicts; however, the ethical rules that govern attorneys in Louisiana place that burden squarely upon the private counsel, not upon the Department. Despite this, our office does as much due diligence as possible to insure conflict free counsel and has and will continue to remove such conflicts by whatever means are available and effective.

Additionally, it is important to note that, since Attorney General Jeff Landry took office, decisions concerning appointment of counsel have been made at the division level, not at the executive level. These decisions are made with one thing in mind - how best to represent the interest of the state - and are made with cooperation and consultation from the Office of Risk Management. It also important to note that over the last four years our office has approved for appointment more attorneys and has made every effort to diversify the contract counsel portfolio.

The Department also understands that a relationship between a client and his counsel is one of trust. Accordingly, it is not unusual for state agencies in all branches - executive, judicial and legislative - to request certain private legal counsel when either the agency or its employees are sued for tort damages. In fact, when your own agency was sued, your office requested a specific private attorney to be appointed. When the request is in the best interest of the State (financially and otherwise) and able to be accommodated, the Department will do so, as was the case with your request.



Finally, the report appears to be a replication of the 2000 audit of the Department by former auditor Dan Kyle, without an appreciation of the changes in the law that have occurred in the past twenty years nor an understanding of the nuances of defending litigation that were raised not only by then-Attorney General Ieyoub but also the Landry administration during the current audit.

Sincerely,

**JEFF LANDRY**  
**ATTORNEY GENERAL**

By: 

\_\_\_\_\_  
Sonia Mallett  
Director, Litigation Division

JL/SM/jbw





Louisiana Legislative Auditor  
Performance Audit Services

Checklist for Audit Recommendations

**Agency:** Department of Justice

**Audit Title:** Selection and Oversight of Attorneys Defending Claims Against the State

**Audit Report Number:** 40190019

**Instructions to Audited Agency:** Please fill in the information below for each recommendation. A summary of your response for each recommendation will be included in the body of the report. The entire text of your response will be included as an appendix to the audit report.

<p><b>Finding 1: DOJ has not developed formal criteria for determining whether to use contract attorneys or DOJ attorneys to defend claims against the state. DOJ's goal is to use in-house attorneys for 85% of cases because it is more cost-effective than using contract attorneys. Without formal and documented criteria on why it decides to use contract attorneys, the state may spend funds on contract attorneys for legal work that could be performed by existing staff at a lower cost.</b></p>
<p><i>Recommendation 1: DOJ should develop formal criteria for determining whether to assign contract attorneys versus DOJ attorneys to defend claims against the state.</i></p>
<p>Does Agency Agree with Recommendation?    <input type="checkbox"/> Agree    <input checked="" type="checkbox"/> Disagree</p>
<p>Agency Contact Responsible for Recommendation:</p>
<p><i>Name/Title: Sonia Mallett, Director, Litigation Division</i></p>
<p><i>Address: 1885 North 3<sup>rd</sup> Street</i></p>
<p><i>City, State, Zip: Baton Rouge, Louisiana 70802</i></p>
<p><i>Phone Number: (225) 326-6300</i></p>
<p><i>Email: <a href="mailto:MallettS@ag.louisiana.gov">MallettS@ag.louisiana.gov</a></i></p>
<p><i>Recommendation 2: Once it develops formal criteria, DOJ should document what criteria was used in its decisions to assign contract attorneys versus DOJ attorneys to defend claims against the state.</i></p>
<p>Does Agency Agree with Recommendation?    <input type="checkbox"/> Agree    <input checked="" type="checkbox"/> Disagree</p>
<p>Agency Contact Responsible for Recommendation:</p>
<p><i>Name/Title: Sonia Mallett, Director, Litigation Division</i></p>
<p><i>Address: 1885 North 3<sup>rd</sup> Street</i></p>
<p><i>City, State, Zip: Baton Rouge, Louisiana 70802</i></p>
<p><i>Phone Number: (225) 326-6300</i></p>
<p><i>Email: <a href="mailto:MallettS@ag.louisiana.gov">MallettS@ag.louisiana.gov</a></i></p>

<p><b>Finding 2: Once DOJ decides to use a contract attorney to defend a claim, DOJ does not have formal published procedures for selecting which contract attorneys will be assigned, as required by state law. As a result, DOJ cannot ensure that its selection process is fair and free from bias. In addition, DOJ does not use past performance evaluations when selecting attorneys or ensure that the contract attorneys it selects meet minimum qualifications.</b></p>
<p><i>Recommendation 3: DOJ should develop a written appointment process for selecting contract attorneys and publish it in the Louisiana Bar Journal yearly as required by state law.</i></p>
<p>Does Agency Agree with Recommendation?    <input type="checkbox"/> Agree    <input checked="" type="checkbox"/> Disagree</p>
<p>Agency Contact Responsible for Recommendation:</p>
<p><i>Name/Title: Sonia Mallett, Director, Litigation Division</i></p>
<p><i>Address: 1885 North 3<sup>rd</sup> Street</i></p>
<p><i>City, State, Zip: Baton Rouge, Louisiana 70802</i></p>
<p><i>Phone Number: (225) 326-6300</i></p>
<p><i>Email: <a href="mailto:MallettS@ag.louisiana.gov">MallettS@ag.louisiana.gov</a></i></p>
<p><i>Recommendation 4: DOJ should establish a process that requires it to formally document that the past performance of contract attorneys was considered in the selection process to better ensure that it is not appointing contract attorneys that have failed to perform satisfactorily.</i></p>
<p>Does Agency Agree with Recommendation?    <input type="checkbox"/> Agree    <input checked="" type="checkbox"/> Disagree</p>
<p>Agency Contact Responsible for Recommendation:</p>
<p><i>Name/Title: Sonia Mallett, Director, Litigation Division</i></p>
<p><i>Address: 1885 North 3<sup>rd</sup> Street</i></p>
<p><i>City, State, Zip: Baton Rouge, Louisiana 70802</i></p>
<p><i>Phone Number: (225) 326-6300</i></p>
<p><i>Email: <a href="mailto:MallettS@ag.louisiana.gov">MallettS@ag.louisiana.gov</a></i></p>
<p><i>Recommendation 5: DOJ should develop a process for ensuring and documenting that contract attorneys assigned to defend the state comply with all minimum qualifications, and regularly update this documentation as applicable to ensure continued compliance over time.</i></p>
<p>Does Agency Agree with Recommendation?    <input type="checkbox"/> Agree    <input checked="" type="checkbox"/> Disagree</p>
<p>Agency Contact Responsible for Recommendation:</p>
<p><i>Name/Title: Sonia Mallett, Director, Litigation Division</i></p>
<p><i>Address: 1885 North 3<sup>rd</sup> Street</i></p>
<p><i>City, State, Zip: Baton Rouge, Louisiana 70802</i></p>
<p><i>Phone Number: (225) 326-6300</i></p>
<p><i>Email: <a href="mailto:MallettS@ag.louisiana.gov">MallettS@ag.louisiana.gov</a></i></p>

## APPENDIX B: ORM'S RESPONSE



Office of Risk Management  
State of Louisiana  
Division of Administration

JOHN BEL EDWARDS  
GOVERNOR



JAY DARDENNE  
COMMISSIONER OF ADMINISTRATION

May 18, 2020

Mr. Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
P. O. Box 94397  
Baton Rouge, LA 70804-9397

RE: Selection and Oversight of Attorneys Defending Claims Against the State

Dear Mr. Purpera,

Thank you for the opportunity to provide your staff with an overview of the litigation portion of the State's Risk Management Program administered by the Office of Risk Management. ORM's response to the findings and recommendations are as follows:

**Recommendation 6:** *ORM should develop formal, written criteria that incorporate review of past performance evaluations when deciding to concur on DOJ contract attorney appointments and document the application of the criteria on each attorney selection.*

Although ORM does utilize criteria to assist in deciding to grant or withhold its concurrence on DOJ's appointment of private legal counsel, it does not document its application on individual concurrences. ORM is reviewing its processes and will formalize criteria and appropriate documentation of attorney concurrences.

**Recommendation 7:** *ORM should include compliance reviews of case handling and billing requirements in its monthly performance monitoring process to ensure that Sedgwick obtains all required case management and billing documentation from contract attorneys within required timeframes.*

Although ORM has performance monitoring processes in place to ensure that our TPA fulfills its obligations under the contract, we acknowledge that supplementing those procedures to include specific case management and documentation reviews would be beneficial. ORM has conveyed to Sedgwick management staff that greater attention must be directed to ensuring attorney compliance with the Case Handling Guidelines and Billing Procedures.

Sincerely,

Melissa Harris  
State Risk Director



## APPENDIX C: SCOPE AND METHODOLOGY

This report provides the results of our performance audit of the Louisiana Department of Justice (DOJ) and the Office of Risk Management (ORM). We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This audit generally covered the period July 1, 2015, through June 31, 2019. Our audit objective was:

**To evaluate DOJ's and ORM's processes for the selection and oversight of attorneys defending claims against the state.**

We conducted this performance audit in accordance with generally accepted *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective and performed the following audit steps:

- Researched and reviewed Louisiana statutes and regulations relating to ORM's administration of the state's risk management program and DOJ's authority to select defense attorneys for claims against the state.
- Reviewed our 2000 performance audit on the selection of contract attorneys as well as our 2004 follow-up study on the implementation of the recommendations in the 2000 report.
- Researched and reviewed DOJ and ORM internal policies, interagency agreements, and standard forms to determine the process for selecting and overseeing both DOJ in-house attorneys and contract attorneys who defend claims against the state.
- Interviewed DOJ and ORM staff to determine how attorney assignments were made and documented and how oversight of defense attorneys was exercised.
- Reviewed the attorney files for a targeted sample of contract attorneys selected by DOJ to ensure that compliance with the minimum qualifications was properly documented.
- Reviewed claim files for a targeted sample of claims to determine whether ORM ensured that defense attorneys complied with the guidelines/procedures.

- We acquired access through ORM to the electronic claims system, Juris, and the electronic billing system for contract attorneys, Accuity.
- We tested compliance with the guidelines/procedures by reviewing individual case files and billing files and determining whether required documentation such as budgets and case assessments were documented.
- We provided the results of our analysis to DOJ and ORM staff to review for accuracy and reasonableness.



**APPENDIX D: MINIMUM QUALIFICATIONS, CONDITIONS  
FOR APPOINTMENT AS SPECIAL ASSISTANT ATTORNEY  
GENERAL IN RISK LITIGATION**  
*As Published in Louisiana Bar Journal*

## Minimum Qualifications, Conditions for Appointment as Special Assistant Attorney General in Risk Litigation

The minimum qualifications and conditions for appointment as a Special Assistant Attorney General in risk litigation are listed below.

1. The attorney shall be admitted to practice law in the state of Louisiana unless the action is pending in another state, in which event the attorney shall be admitted to practice in the state where the action is pending.
2. If the action is pending before a federal court or other court of special admission requirements, the attorney shall be admitted to practice before such court.
3. The attorney shall not be under suspension by the Louisiana Supreme Court or any court in which the action is pending.
4. The attorney and any attorney with whom he is engaged in the practice of law shall not represent any plaintiff in any tort claim against the state and/or its departments, commissions, boards, agencies, officers, officials or employees unless specifically waived in writing by the Attorney General and the Office of Risk Management, or, if applicable, the institutions exempted from the state risk management program pursuant to La R.S. 17:3139.5(e)(i) (hereinafter exempted institutions).
5. The attorney shall not have a conflict of interest as provided by the Rules of Professional Conduct of the Louisiana State Bar Association.
6. The attorney shall have and maintain professional malpractice insurance with minimum coverage of \$1 million per claim with an aggregate of \$1 million.

7. The attorney must be a subscriber to an electronic billing program designated by the Office of Risk Management or, if applicable, the exempted institutions.
8. The attorney should have a Martindale-Hubbell rating of "distinguished" or better.
9. The attorney should have been admitted to and engaged in the practice of law for a minimum of three years.
10. The requirements set forth in 8 and 9 may be waived by the Attorney General, in which event the attorney will be placed in a probationary status for a period of three years. During the period of probation, the attorney's performance will be evaluated annually by the State Risk Administrator-Claims and the Assistant Director for Litigation Management of the Office of Risk Management or, if applicable, the Director for the Office of Risk Management of the exempted institutions, and the Director of the Litigation Program of the Louisiana Department of Justice.

In the event that the attorney's performance is acceptable during the three-year probationary period, he shall be removed from probationary status. In the event the attorney's performance is unsatisfactory, he may be removed from the probationary list or, at the discretion of the State Risk Administrator-Claims, the Assistant Director for Litigation Management of the Office of Risk Management or, if applicable, the Director for the Office of Risk Management of the exempted institutions, and the Director of the Litigation Program of the Louisiana Department of Justice, the probationary period may be extended.

### Additional Requirements for the Defense of Medical Malpractice Claims

11. The attorney should have three years' experience in the defense of medical malpractice claims.
12. The attorney should have participated as counsel of record in at least two medical malpractice trials.
13. Professional malpractice limits shall be at least \$1 million per claim with an aggregate of \$1 million.
14. Requirements 11 and 12 may be waived by the Attorney General, in which event the attorney will be placed on probation as to medical malpractice defense as provided in paragraph 10 above.

### Conditions

1. Any attorney appointed by the Attorney General serves at the pleasure of the Attorney General and may be removed by the Attorney General at any time without cause.
2. Office of Risk Management or, if applicable, exempted institutions may withdraw its concurrence of any attorney only for cause.
3. All contracts must comply with the Ethical Standards for Public Servants, Title 42, Section 15, Part II of the Louisiana Revised Statutes, including, but not limited to, La. R.S. 42:1113.

## APPENDIX E: SUMMARY OF 2000 PERFORMANCE AUDIT REPORT ON THE SELECTION OF LEGAL SERVICES CONTRACTORS USED IN CLAIMS AGAINST THE STATE ISSUED DECEMBER 2000

The exhibit below contains a summary of relevant findings and recommendations from our December 2000 report titled *Department of Justice (DOJ) – Selection of and Authorized Rates for Legal Services Contractors Used in Civil Cases and Personal Injury Claims against the State*.<sup>35</sup> In March 2004, we followed up on the implementation of our recommendations contained in the 2000 report; the status of the recommendations is also summarized in the exhibit below.<sup>36</sup>

Findings	2000 Recommendations	2004 Implementation Status
<b>Contracting Decisions</b>		
<ul style="list-style-type: none"> <li>• DOJ maintained little documentation supporting its decisions to use legal services contractors.</li> <li>• DOJ did not conduct formal cost-benefit analyses as required by law indicating that obtaining the legal services from the private sector was more cost-effective than providing such services itself.</li> <li>• Many legal services contracts were awarded because DOJ did not have sufficient staff to perform the work. In the long run, it may be more cost-effective for DOJ to hire additional staff to handle more of its work.</li> </ul>	1. DOJ should develop and fully implement written policies and procedures governing the process for determining whether to use legal services contractors or DOJ staff. These policies and procedures should include (in addition to a listing of acceptable reasons for using legal services contractors, which DOJ already has) a requirement for written cost-benefit analyses and a requirement for retaining documentation that supports DOJ's decisions.	DOJ has not developed and fully implemented any written policies and procedures governing the process for determining whether to use legal services contractors or DOJ staff. This recommendation was <b>not implemented</b> .
	2. DOJ should conduct a formal long-term cost-benefit analysis to determine if it would be more cost-effective to hire additional staff and reduce or eliminate the use of legal services contractors because of staffing shortages. If the analysis indicates that hiring additional staff would be more cost-effective, DOJ should request additional positions in its next budget request.	DOJ has not conducted a formal long-term cost-benefit analysis to determine if it would be more cost-effective to hire additional staff and reduce or eliminate the use of legal services contractors because of staff shortages. This recommendation was <b>not implemented</b> .

<sup>35</sup> The 2000 report can be found here: [https://lla.la.gov/PublicReports.nsf/86256F9C007A906786256FD400720E6A/\\$FILE/408d488c.PDF](https://lla.la.gov/PublicReports.nsf/86256F9C007A906786256FD400720E6A/$FILE/408d488c.PDF).

<sup>36</sup> The 2004 follow-up study can be found here: [https://lla.la.gov/PublicReports.nsf/FCE9FB7021AA45508625700D005B8A3F/\\$FILE/00000A34.pdf](https://lla.la.gov/PublicReports.nsf/FCE9FB7021AA45508625700D005B8A3F/$FILE/00000A34.pdf).

<b>Selection Process</b>		
<ul style="list-style-type: none"> <li>• DOJ's process for selecting legal services contractors did not ensure that contracts were always awarded to the highest qualified candidates.</li> <li>• DOJ maintained little documentation showing that legal services contractors met minimum qualifications. DOJ also did not document why they selected particular contractors over other candidates.</li> </ul>	<p>3. DOJ should develop and fully implement written policies and procedures governing the process for selecting legal services contractors. These policies and procedures should include, at a minimum, methods to ensure that only contractors who meet established minimum qualifications are selected; criteria and methods to evaluate candidates and to determine the most qualified; a requirement to document why particular contractors are selected over other candidates; a requirement to prepare performance evaluations on the legal services contractors that DOJ monitors; a requirement to use prior performance evaluations (both those prepared by DOJ and those prepared by ORM) in subsequent selection decisions; and a requirement to publish the appointment procedure annually in the <i>Louisiana Bar Journal</i>.</p>	<p>DOJ has not developed and fully implemented written policies and procedures governing the process for selecting legal service contractors. This recommendation was <b>not implemented</b>.</p>