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Report Highlights

Selection and Oversight of Attorneys Defending Claims Against the State

Louisiana Department of Justice and Office of Risk Management

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Why We Conducted This Audit

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. In addition, risk factors related to these processes came to our attention recently that further warranted this work.

What We Found

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 it 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. The exhibit to the right summarizes how much contract attorneys billed versus how much DOJ was paid for claims defended during fiscal years 2017 through 2019.

Attorney Type	Attorney Payments	Percent of Payments
Contract	\$41,969,065	44.5%
DOJ	52,257,933	55.5%
Total	\$94,226,998	100%

Source: Prepared by legislative auditor’s staff using ORM data.

- Once DOJ decides to use a contract attorney to defend a claim, it 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.** 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 attorneys meet minimum qualifications.

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What We Found (Cont.)

- **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 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. We tested 30 cases handled by contract attorneys for compliance with five requirements 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 the exhibit below.

Results of Billing Guidelines Compliance Review 30 Cases Handled by Contract Attorneys	
Requirement Reviewed	Results
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”*	Contract attorneys submitted invoices with prohibited “block billing” on four (13.3%) of 30 cases
*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. Source: Prepared by legislative auditor’s staff using documentation contained in Juris.	

ORM contracts with a third-party administrator, Sedgwick, for claims adjusting services that include investigating the 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.

View the full report, including management’s responses, at www.la.gov.