

**STUDY OF THE
LEGAL SERVICES PROGRAM
OF THE
DEPARTMENT OF THE ATTORNEY GENERAL**

A Report to the Governor and the Legislature of the State of Hawaii

**Submitted by the
Legislative Auditor of the State of Hawaii
Honolulu, Hawaii**

**Report No. 86-16
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FOREWORD

In response to a legislative request, the Office of the Legislative Auditor conducted a management review and analysis of the Department of the Attorney General and its principal program, the legal services program. This review focused upon an assessment of departmental activities relating to such matters as planning, overall organization and management, personnel management, and litigation management.

We wish to acknowledge the cooperation and assistance extended to our staff by officials and personnel of the Department of the Attorney General; the following Hawaii state departments: Budget and Finance, Accounting and General Services, Agriculture, Commerce and Consumer Affairs, Education, Hawaiian Home Lands, Health, Labor and Industrial Relations, Personnel Services, Social Services and Housing, Taxation, Transportation, and the University of Hawaii; the Hawaii Institute for Continuing Law Education; the Pacific Law Institute; the Office of the Public Defender; the Legal Aid Society; the Prosecuting Attorneys of the City and County of Honolulu and the Counties of Kauai, Maui, and Hawaii; the Corporation Counsels of the City and County of Honolulu and the Counties of Kauai, Maui, and Hawaii; the Office of the U.S. Attorney; the Federal Public Defender; Cades, Shutte, Fleming & Wright; Hoddick, Reinwald, O'Connor & Marrack; and the Offices of the Attorneys General of the following states: Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Louisiana, Michigan, Minnesota, New Hampshire, New York, Oregon, Pennsylvania, South Carolina, Texas, Virginia, and Wisconsin.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

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Chapter 1

INTRODUCTION

This study of the Department of the Attorney General, in the form of a review and analysis of the department's management and operations, was undertaken in response to a legislative request contained in Conference Committee Report No. 53 relating to the General Appropriations Act of 1985 (Act 300). In the explanation pertaining to the appropriation for the legal services program, the committee report commented as follows:

"Your committee is aware of administrative problems in the department of the attorney general and requests that a management audit or budget review be conducted by the Legislative Auditor to aid in correcting these problems."

The committee report went on to express specific concern about the budgeting and administration of the litigation fund by the Department of the Attorney General. In light of the fiscal context in which the Legislature's request was made, our review took into account the budgetary implications of the legal services program. However, recognizing the Legislature's concerns regarding administrative practices within the Department of the Attorney General, special attention was given to various aspects of the management and operations of the department.

Study Objectives

The objectives of this review and analysis are:

1. To review areas where the Legislature has expressed specific interest or concern; and

2. To review and analyze administrative policies and practices affecting the legal services program and the operations of the Department of the Attorney General, and where appropriate, to make recommendations for improvement.

Conduct of the Study

Besides the examination of documents and records, the study involved extensive interviewing of program personnel and other persons concerned with legal services. Thus, besides the Attorney General and the First Deputy Attorney General, project team members also interviewed all supervisory personnel within the Department of the Attorney General as well as 40 percent of the legal staff and 30 percent of the support staff—more than 60 persons in total. Also interviewed were the heads or other representatives of more than 75 percent of the state departments and representatives of almost all of the other public legal agencies in Hawaii—federal, state, and county. Discussions were also held with and information was obtained from several of the large private law firms in Hawaii. Finally, information was sought from attorney general offices in other states.

Organization of the Report

This report consists of six chapters. Chapter 1 is this introduction. Chapter 2 provides some background information on the legal services program and the Department of the Attorney General. Chapter 3 discusses the general framework and planning basis for the program. Chapter 4 examines the overall organization and management of the program. Chapter 5 looks at personnel management. Chapter 6 reviews selected aspects of the program's litigation management activities.

Chapter 2

BACKGROUND: THE LEGAL SERVICES PROGRAM AND THE DEPARTMENT OF THE ATTORNEY GENERAL

The legal services program is administered by the Department of the Attorney General. In this chapter, we provide background concerning the program and the legal, budgetary, organizational, and general environmental context in which it functions.

Impact of Events and Trends

The legal services program and the Department of the Attorney General can be significantly affected by events and trends occurring within the general environment. In this section, we briefly identify some of the more significant events and trends which may have already had an impact on the program and the department, or at least have the potential of exerting some influence over them in the future.

First of all, there has been the tremendous growth over the past several decades of government involvement in social reform movements and the use of legal processes and instrumentalities to achieve the purposes of these movements. This period has seen nationwide efforts mounted to promote civil rights, consumerism, and environmentalism. In these movements, governments have been caught up as the vehicles as well as the targets for legal action.

There has also been the explosive growth of litigation in the United States. More and more individuals and groups as well as governmental entities are resorting

to legal action as a means of settling differences and achieving their aims. Despite efforts to expand the number of courts and to streamline legal processes, case backlogs continue to mount and delays become longer. For a number of years, U.S. Chief Justice Warren E. Burger and others have been urging greater use of alternatives to legal action to resolve differences, such as mediation and conciliation. Yet, so long as the trend of increasing litigation continues, governments have almost no recourse but to try to expand their legal services to cope with the growing workload.

Another trend throughout the nation has been the rapid growth in the total number of lawyers. Not so apparent, however, are the full implications of this trend. For example, no clear relationship has been established between this trend and the two previously discussed trends. However, it is inevitable that this trend will have an effect upon the supply of and demand for attorneys available to staff Hawaii's legal services program.

The legal field has also been affected by technological change. With the advent of computers, word processors, and modern communications, lawyers are finding themselves more and more dependent upon the practical application of technology to their work.

Another apparent emerging trend is that toward larger and more diversified organizations. This trend seems to be affecting other professions like medicine, dentistry, and accounting as well as the legal profession. Just as the State's legal services program has grown rapidly in recent years, so have a number of Hawaii's private legal firms experienced quite rapid growth—in several instances through the consolidation of two large, previously independent firms. Again, all the reasons for and implications of this trend are not completely clear. However, it would appear

that as society becomes more complex, there also comes a greater urge or need to create larger and more multifaceted organizations to deal with the new conditions.

Finally, and perhaps in response to some or all of the foregoing trends, there has been a discernible trend toward more professional management in the legal field, especially the hiring of non-lawyers to manage the "business" aspects of legal services or the diversion of attorney time and effort from practicing law to actual management. A number of the large private law firms in Hawaii have their own executive business managers. During the 1986 legislative session, the request of the Department of the Attorney General for the funding of an administrative manager position was approved for FY 1986-87.

Legal Basis

The legal services program derives from the constitutional and statutory role assigned to the department and to its head, the Attorney General. The department is an executive department which operates under the general direction of the Governor. The Attorney General, like other department heads, is appointed by the Governor. However, the Attorney General is subject to a different and constitutionally provided removal process. While other department heads may be removed at the pleasure of the Governor, the removal of the State's chief legal officer by the Governor is subject to the advice and consent of the State Senate.¹

Under Hawaii law, the Attorney General is chief legal and law enforcement officer of the State. The authority, powers, and responsibilities of the department

1. Hawaii State Constitution, Art. V, Sec. 6 and Section 26-31, HRS.

and the Attorney General are generally established and defined under Chapter 26, Hawaii Revised Statutes, and Chapter 28, HRS. Section 26-7, HRS, provides in part as follows:

"The department shall administer and render state legal services, including furnishing of written legal opinions to the governor, legislature, and such state departments and officers as the governor may direct; represent the State in all civil actions in which the State is a party; approve as to legality and form all documents relating to the acquisition of any land or interest in land by the State; and, unless otherwise provided by law, prosecute cases involving violations of state laws, or other matters which are enforceable in the courts of the State. The attorney general shall be charged with such other duties and have such authority as heretofore provided by common law or statute."

Under Chapter 28, the Attorney General is empowered and entrusted to carry out a range of actions, including representing the State in legal proceedings, except in cases where the Director of the Office of Consumer Protection performs this function (Section 28-1); prosecuting offenders and enforcing bonds (Section 28-2); conducting investigations of alleged violations of law (Section 28-2.5); rendering legal opinions (Section 28-3); giving legal advice to public officers (Section 28-4); extending legal counsel and aid to "poor and oppressed citizens of the State" (Section 28-5); and appointing and removing at pleasure, members of the department's legal staff (Section 28-8). Further, under Sections 28-11 and 28-11.5, HRS, the Attorney General is authorized to appoint investigators and law enforcement officers to provide security for the Governor and other public officials.

In addition to the foregoing, Section 28-91, HRS, establishes a Medicaid fraud unit within the department for the purpose of conducting a statewide program for the investigation and prosecution of Medicaid fraud cases, and Section 28-101, HRS, mandates the Attorney General to set up a statewide witness program to fund or otherwise provide for the security and protection of government witnesses.

From the foregoing, it can be seen that the Attorney General and the department have been granted broad authority and responsibility in dealing with legal matters involving the State. However, this is not an exclusive delegation of powers and duties. There are several areas where there is an overlapping and sharing of authority and responsibility for legal matters between the department and other governmental entities. One is in the field of consumer protection and another is in the field of criminal prosecution. Still another is in the area of legal representation for the destitute and economically disadvantaged.

Among many attorney general offices throughout the United States, consumer protection is a very major function. However, in Hawaii much of the activity in this field has shifted to other state agencies—principally the Office of Consumer Protection, the Regulated Industries Complaints Office, and the Division of Consumer Advocacy, all of which fall under the jurisdiction of the Department of Commerce and Consumer Affairs (DCCA). The Attorney General, nevertheless, still retains some authority and responsibility with regard to consumer protection matters.

Similarly, over the years, there has been a shift of authority and responsibility for criminal prosecutions from the Attorney General to the four county prosecuting attorneys' offices. During the Kingdom of Hawaii and much of the territorial period, authority and responsibility in this area resided in the Attorney General. However, in 1932, the Office of Public Prosecution was established for the City and County of Honolulu. At the same time, the Public Prosecutor was made a deputy to the Attorney General, was removable by the Attorney General with the approval of the Governor, and served under the control and direction of the Attorney General.

Subsequent legislation removed the Honolulu prosecutor from the status of being a deputy to the Attorney General and deleted the statutory language placing the prosecutor "under the control and direction" of the Attorney General, but substituted in lieu of the latter the wording, "under the authority" of the Attorney General. This phraseology is still reflected in the charter of the City and County of Honolulu.² The establishment of separate prosecutors for the other three counties came later, but the same relationship now prevails between the State and all four of the counties.

This overlapping of authority and responsibility between the State and the counties in criminal prosecution has given rise to litigation and has resulted in the Hawaii Supreme Court ruling on the matter. In the case of *Amemiya v. Sapienza* (63 Haw. 424), the court has ruled that while the Attorney General is the chief legal officer of the State and has ultimate responsibility for enforcing the penal laws of statewide application, the Public Prosecutor has been delegated the primary authority and responsibility for initiating and conducting criminal prosecutions within the pertinent county jurisdiction. Thus, while most criminal prosecution rests with the county public prosecutors, the Attorney General under certain circumstances can supersede the public prosecutors.

One other legal activity which now falls largely outside the purview of the Attorney General is that of serving as defense counsel for private individuals in criminal proceedings. Although it may be argued that the Attorney General still

2. Hawaii, *Revised Charter of the City and County of Honolulu 1973 (1983 Edition)*, Art. VIII, Sec. 8-105(b).

retains some authority and responsibility in this area by virtue of Section 28-5, HRS,³ the general view is that it is proper to place this function outside of the department so as to remove any question of conflict of interest between the functions of prosecution and defense. Accordingly, Hawaii, like many other jurisdictions, has created a separate Office of the Public Defender. In addition, the courts may appoint legal counsel for individuals, and legal assistance may be provided to individuals through agencies like the Legal Aid Society.

Program Missions

As set forth in the State's program structure, the missions of the legal services program are as follows:

"[1] to facilitate the compliance with and enforcement of state and federal laws by providing legal advice and opinions, by conducting investigations and other legal services as required; [2] to protect the State's interest in all legal matters before the state and federal courts; and [3] to safeguard the rights and interests of the people by undertaking legal or judicial actions on their behalf."⁴

Program Costs

Although there is a high degree of overlap between the budget of the department and the budget of the legal services program, the two are not completely synonymous budget entities. While most of the department's activities

3. Section 28-5 provides that the Attorney General "shall give counsel and aid to poor and oppressed citizens of the State and assist them in obtaining their just rights without charge," except that "he shall not be obliged to render such aid, counsel, and assistance, unless requested to do so by the governor, or by some one of the heads of departments."

4. *State of Hawaii Program Structure, July 1984* (Effective July 1, 1985), (Department of Budget and Finance, State of Hawaii).

are encompassed within the legal services program, the department also administers two other smaller programs: (1) state criminal justice information and identification, and (2) capitol building security. The focus of this report is on the legal services program.

The legal services program constitutes the bulk of the funds received and expended by the department. For FY 1986-87, the appropriation for the legal services program is \$10,060,203, which is 85 percent of the department's total budget of \$11,804,674. Most of the department's funding is from the general fund.

Organizational and Locational Considerations

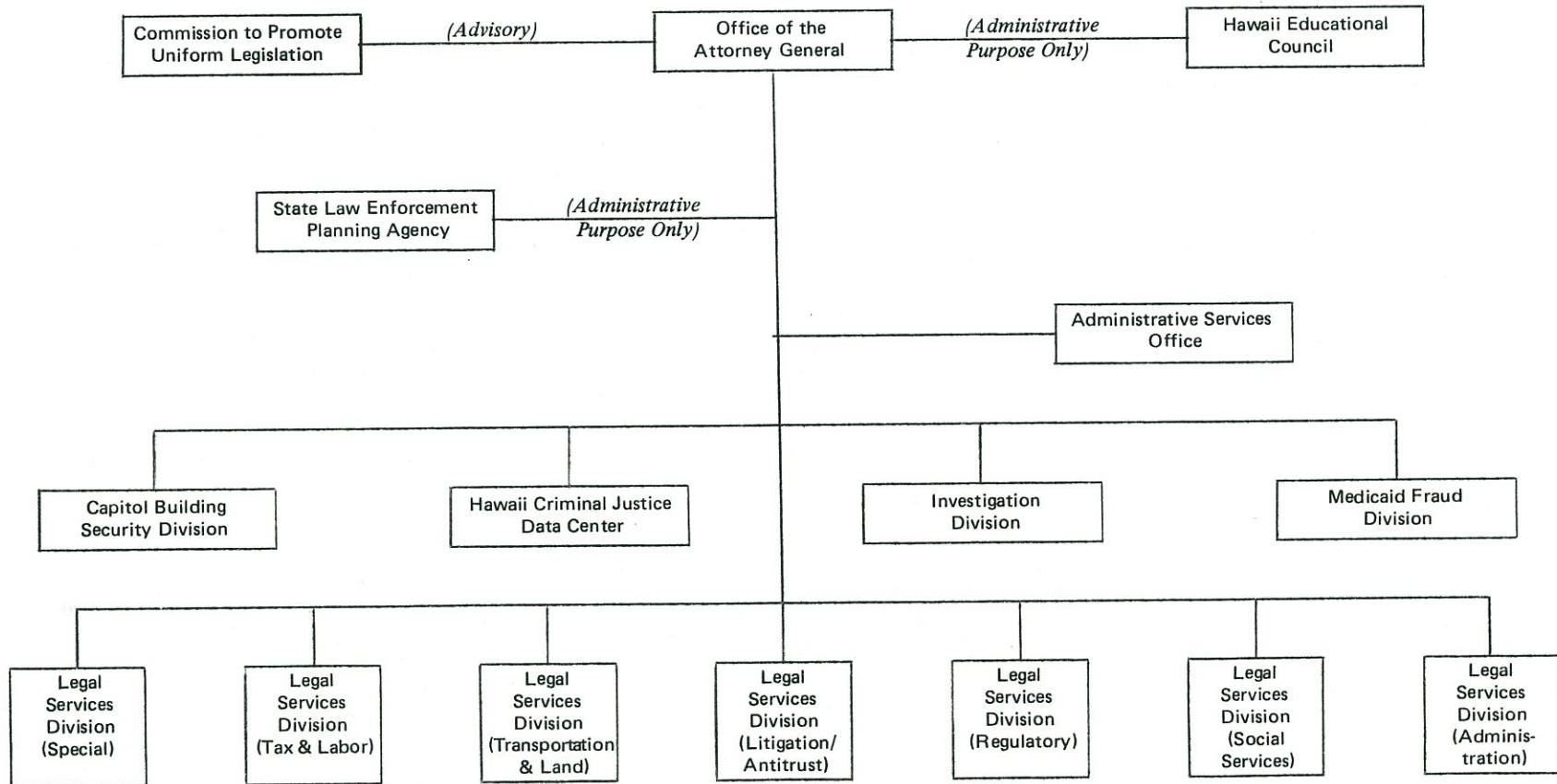
Inasmuch as the legal services program constitutes such a major portion of the work and responsibilities of the department, it is significantly affected by how the department is organized and operates. In this section, we summarize some of the important organizational and locational considerations that need to be taken into account when looking at the legal services program.

Difference between the authorized and actual organizations. Perhaps the most important point to recognize with respect to the department's organization is the fact that a significant difference exists between the formally authorized organization as reflected in official organization charts and the actual organization in its day-to-day operations.

1. *The authorized organization.* Figure 2.1 is the organization chart for the Department of the Attorney General based upon the currently authorized organizational plan for the department filed with the Office of the Lieutenant Governor. It shows eight divisions providing legal services to various elements of the state government.

Figure 2.1

Department of the Attorney General
Organizational Chart



Source: Hawaii, Office of the Lieutenant Governor, November 1985.

It also shows two general support activities: the Investigation Division and the Administrative Services Office. Included also are several entities which are attached to the department for administrative and advisory purposes: the Commission to Promote Uniform Legislation, the Hawaii Education Council, and the State Law Enforcement Planning Agency. Finally, there are the units to carry out the other two programs administered by the department: the Hawaii Criminal Justice Data Center and the Capitol Building Security Division. The Administrative Services Office provides budget, personnel, fiscal, and library services for all units of the department.

2. *The actual organization.* Our review indicates that the department operates according to an organizational plan which differs significantly from that depicted in Figure 2.1. Variations from the authorized organization have been occurring for at least two years. The version in effect at the time this report was being written is reflected in Figure 2.2.

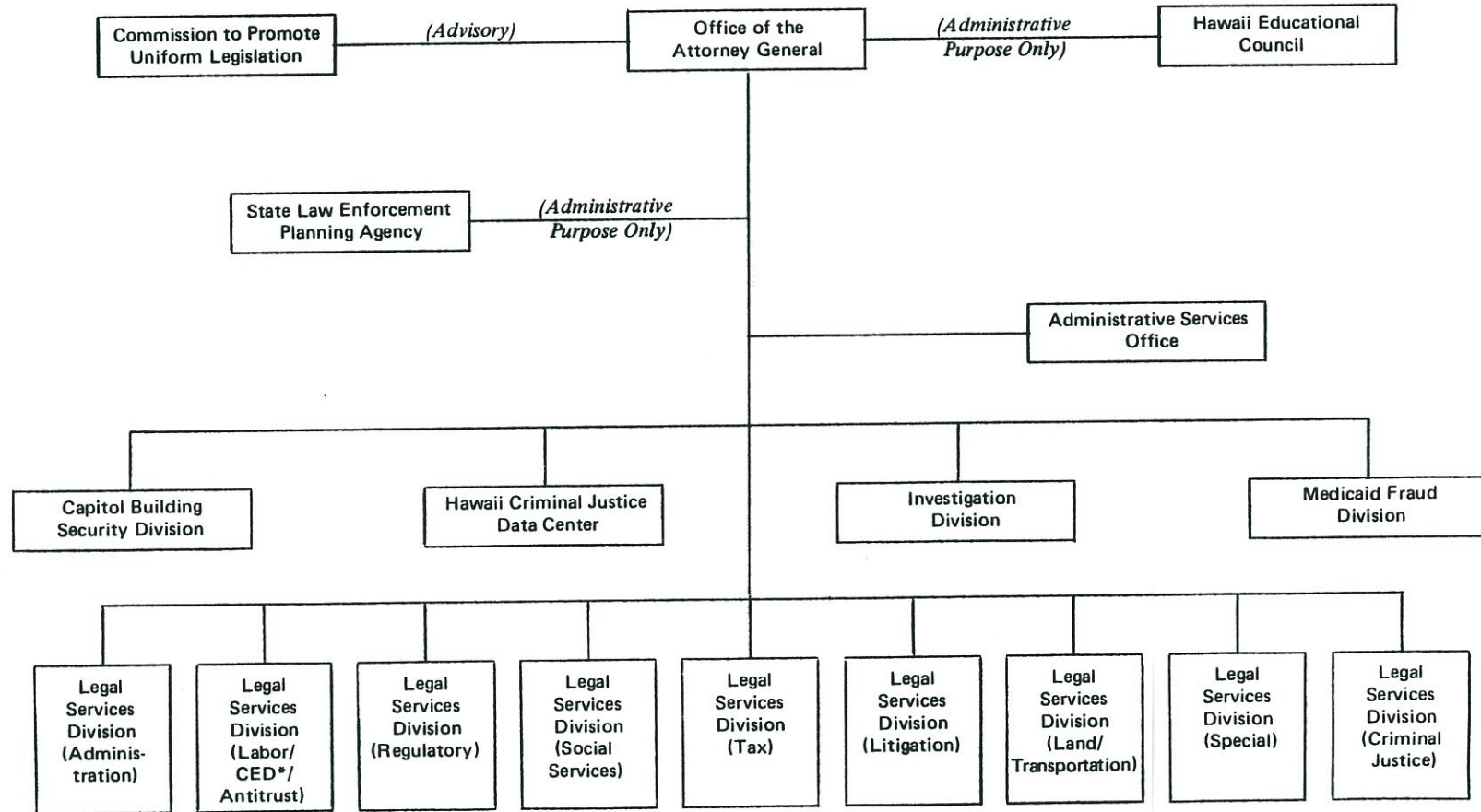
The main difference between the authorized and actual organizations for the department is the divisional arrangement for providing legal services. Whereas these activities are allocated among 8 divisions according to the authorized structure, they were actually apportioned among 10 divisions at the time this report was being written. Just shortly before, there had been 11 divisions, but early in 1986, one division was abolished and its functions and personnel were dispersed to three other divisions.⁵ The 10 actual legal services divisions are described below.⁶

5. The Investigation Division is sometimes counted as an additional legal services division. However, it is part of the legal support staff rather than one of the legal services divisions.

6. Hawaii, *Handbook, Department of the Attorney General*, 1981.

Figure 2.2

Department of the Attorney General
Informal Organizational Chart



Source: Hawaii, Department of the Attorney General.

*Commerce and Economic Development.

a. *Administration Division.* This division provides legal services to the Office of the Governor, the Office of the Lieutenant Governor, the Legislature, the Judiciary, and the following executive departments: Accounting and General Services, Budget and Finance, Education, Personnel Services, University of Hawaii, and the various boards and commissions attached to these departments.

b. *Labor/Commerce and Economic Development/Antitrust Division.* The labor unit represents the Department of Labor and Industrial Relations. In the area of unemployment insurance, the legal services include the prosecution of cases involving fraudulent receipt of unemployment compensation.

The commerce and economic development unit services the Department of Planning and Economic Development (DPED) as well as DCCA. In DPED, legal services are primarily for land use and coastal zone management. In DCCA, legal services are provided for business registration, federal regulatory boards and commissions, insurance, consumer advocacy, and the state professional and vocational licensing boards.

The antitrust unit has the responsibility for investigating and enforcing antitrust laws; advocating competition before the Legislature and regulatory boards; coordinating efforts with the Office of Consumer Protection; advising state officials on antitrust matters; and when appropriate, representing state agencies and officials as defendants in actions.

c. *Regulatory Division.* This division services the following departments: Agriculture, Health, Hawaiian Home Lands, and Defense, the Land Use Commission, and the Hawaii Housing Authority. The services provided by this division primarily involve regulatory functions which include all federal administrative matters.

d. *Social Services Division.* This division provides the legal service and support for the Public Welfare Division, including Child Protective Services, and the Corrections Division of the Department of Social Services and Housing. This division also services the intake service centers and the Criminal Injuries Compensation Commission.

e. *Tax Division.* This division provides legal support to the Department of Taxation. It represents the State in taxation matters in the state and federal courts, drafts and reviews legal documents, and assists in the preparation and review of legislative bills.

f. *Litigation Division.* The major function of this division is to defend the State in any case assigned to it by the Attorney General. It defends the State and state employees in tort cases and works with state agencies to prevent situations which give rise to personal injury and property damage suits.

g. *Medicaid Fraud Division.* This division investigates and prosecutes Medicaid fraud cases and violations of state and federal laws relating to medical assistance.

h. *Land/Transportation Division.* This division furnishes legal services to the Department of Land and Natural Resources and the Department of Transportation. The preparation of documents relating to land acquisitions and land condemnation actions are among the legal services it provides.

i. *Special Assignment Division.* In this division, one deputy is assigned the responsibility for the legal check of all opinions and memorandums issued by the Attorney General, administration proposals for legislation, and bills passed by the Legislature. Another deputy provides legal services for the Office of Hawaiian Affairs. A third deputy handles special litigation cases.

j. *Criminal Justice Division.* This division handles criminal prosecutions that: (1) involve statewide or interagency coordinated effort, (2) have been statutorily placed in the department, (3) are requested by county prosecutors, and (4) involve a conflict of interest for a county prosecuting attorney's office.

Physical dispersion of legal services activities. At present, the legal services program is characterized by a fairly high degree of physical separation and dispersion. The department's divisions and units serving this program are located in 14 different locations.

The primary location is in the State Capitol. Located here are the Attorney General; the First Deputy Attorney General; and the Litigation, Regulatory, Administration, Social Services, and Special Assignment Divisions along with the Investigation Division, the Administrative Services Office, the library, and two of the three stenographic pools.

The Land/Transportation Division, Commerce and Economic Development/Antitrust Divisions, and part of the Regulatory Division are located in the Kekuanaoa Building.⁷ The Medicaid Fraud Division is located in the Bishop Trust Building. The Administration Division's legal and support staff for the University of Hawaii are located in Bachman Hall on the Manoa campus of the University of Hawaii. Parts of the Regulatory Division are located in the Hawaii Housing Authority office in Kalihi and in the Old Federal Building. The Tax Division is in the Department of Taxation. The labor unit is located in the Department of Labor and Industrial Relations. A Labor/Commerce and Economic Development attorney is

7. In 1986, at least two divisions now located in the State Capitol will be occupying part of the basement of the Kekuanaoa Building.

located with the Hawaii Community Development Authority in the Gold Bond Building. The Criminal Justice Division is located in the Kamamalu Building with the State Law Enforcement Planning Agency.

Funding for seven temporary deputies was approved under Act 300, SLH 1985, for the specific purpose of dealing with Child Protective Services cases. All of the positions have been filled, two of which are located on the island of Hawaii, one on Maui, and one on Kauai. The other three positions are located on Oahu with the Social Services Division.

Chapter 3

PLANNING FOR THE LEGAL SERVICES PROGRAM

Introduction

Program planning involves the determination of the objectives of a program, identification of alternative ways of attaining stated objectives, the weighing of alternatives, setting priorities, and formulating measures to assess whether expected end results are being achieved. In this chapter, we review the legal services planning efforts of the Department of the Attorney General.

Summary of Findings

1. Although the legal services program has grown rapidly over the past decade and continues to grow, the Department of the Attorney General has not developed an adequate strategic plan to guide this growth.

2. There is a need for more precise program objectives for the legal services program. There is also a need for meaningful measures to assess the effectiveness of the program and appropriate standards to set program priorities.

Need for Comprehensive

Plan for Legal Services

Like its counterparts across the nation, the department has seen its role shift from that of "social enforcer" of the 1960s and early 1970s to that of "defender of the state" in the late 1970s and early 1980s. The 1980s have been said to be marked by an "explosion" of tort litigation directed not by the state but against the state in

a context of ever increasing demands on the limited resources of the states.¹ The focus has changed from litigating in the public interest and providing advice and counseling to client departments and agencies to defending the state in litigation cases. In Hawaii, prosecution of white collar crimes and welfare fraud has also been increasing at the state level. Moreover, while the Department of Commerce and Consumer Affairs has been developing its own legal staffing to handle specific consumer protection matters, the collapse of several financial institutions and related incidents here have caused the Attorney General's staff to become involved in the area of consumer protection.

With the rapid growth in the legal services program and the shift in focus towards litigation and criminal prosecution, we find that the department has not adequately reviewed or revised its outdated program plan nor has it adequately defined what the legal services program is and what it is supposed to accomplish. In fact, a statement made by a former Attorney General indicates that the department is well aware that the program has been expanded without a comprehensive plan. He testified in part that:

"To meet the urgent, specialized, and increasing legal service needs of individual agencies, the Department has, in a 'band-aid' fashion, doubled the number of deputies (from 45 to 90) and the number of divisions (from 7 to 13) in less than ten years.

"These deputies and divisions are geographically located in at least eight locations on Oahu. The office has thus endured an unstructured evolution without the benefit of an overall strategic plan or design. . . ."2

1. Frank J. Kelley, "Changes in the State's Law Firm Over the Past Twenty Years," *Wayne Law Review*, Vol. 29, No. 2, Winter 1983, pp. 267-277.

2. Testimony on the Multi-Year Program and Financial Plan submitted by the Attorney General to the Senate Committee on Judiciary, February 12, 1985.

Program objectives and priorities. Considering the broad gamut of activities encompassed under the legal services program, the wide range of fiscal and other implications inherent in the variety of cases and legal issues likely to arise, and the finite limits on the resources that can be made available to the program, it is also the case that not all legal matters can or should receive equal attention. In short, it is necessary to establish definite objectives and priorities for the program. Only by this means is it possible to make meaningful and reasonable decisions regarding the deployment of resources to carry out the program.

As stated for program budgeting purposes, the objectives of the program are as follows:

"To facilitate the compliance with and enforcement of state and federal laws by providing legal advice and opinions, conducting investigations, and other legal services as required; to protect the State's interests in all legal matters before state and federal courts; and to safeguard the rights and interests of the people by undertaking legal or judicial actions on their behalf."³

In addition to its budget document presentation, the department also submits to the Governor an annual statement of its goals and objectives. The department's goals and objectives for FY 1985-86 set forth in the most recent of these reports to the Governor deal, for example, with such matters as acquiring a minicomputer for the department; reclassifying legal stenographers so as to upgrade their salaries, greatly increasing the utilization of paralegals; expanding the number of investigators; adding a night shift steno pool; raising morale among the legal

3. Hawaii, *The Multi-Year Program and Financial Plan and Executive Budget for the Period 1985-1991 (Budget Period: 1985-87)*, Volume III, Honolulu, December 1984, p. 1759.

stenographers, and providing for an administrative director to handle the management aspects of the department's operations.⁴

Apart from or in addition to these statements, what is needed is an overall framework for relating particular actions to the end purposes of the legal services program and for determining priorities among the several listed goals and objectives. In setting goals and objectives, it is essential first to identify and analyze the problems or issues facing the program and to examine possible solutions. The problems may be either substantive (e.g., an upswing in a particular kind of cases or an increase in judgments against the State) or operational (e.g., a high rate of personnel turnover or an undue delay in processing documents). The main thing is to determine as specifically as possible what needs to be done. Unless this is known, it is virtually impossible for the department to set clear directions for itself.

Currently, the department is reassessing and revising the objectives for the legal services program. According to the Attorney General, she and her division supervisors are developing objectives for the program which will address current issues in such areas as litigation, counseling, and investigation.

Experience in other states. Attorney general offices in some states reportedly have successfully gone through such a goals and objectives setting process. Two are cited here as examples which might be considered when setting goals and objectives for Hawaii's legal services program.

The first involves the Department of Justice of Oregon. There are ten major objectives for Oregon's legal services program. These are then translated into fairly

4. Memorandum to Brad Mossman, Office of the Governor, from Attorney General, Subject: Departmental Goals Update—Memo No. 84-7, July 10, 1984.

specific directions, policies, and actions which are all briefly described in the budget documents. One of these ten objectives is set forth below to illustrate Oregon's approach:

"Organizational Cohesion as a Public Law Firm. The department must be organized and managed to function, not as a collection of 100 solo practitioners, but as a law firm promoting specialization, interaction, consultation and effective internal communications to and from operating units and the Attorney General. To that end, functional groupings of sections and divisions, and the establishment of a team management structure under an executive staff were created. The development of a strong cadre of middle management professionals continues to be a major objective of the department's philosophy.

This policy was a major focus of the 1981-83 reorganization. To ensure its continuance, the department has, among other actions:

- Consolidated Health and Human Services Section and Education Section.
- Completed move of most General Counsel sections to one floor in the Justice Building.
- Made major strides in computerized case reporting and docketing to ensure consistency of legal policy and case management. . . .
- Continued developing an upper middle management corps by increased delegation of day-to-day management responsibility.
- Reorganized and reclassified department support staff to clearly define working responsibilities and reporting relationships to legal staff.
- Instituted monthly newsletter, attorney deskbook, support staff deskbook and policy and procedures manual to communicate policies and actions to department personnel. . . .
- Continued programs from the 1981-83 reorganization, including establishing lines of authority and accountability, assigning counsel by functional groupings instead of by agency, emphasizing peer consultation, continuing meetings of executive staff and attorneys-in-charge to develop cohesive departmental policy."⁵

5. Oregon, Department of Justice, *1985-87 Budget Requests, Narrative or Special Analysis*, Salem, pp. 12-13.

Illinois provides the other example. The Attorney General for that state reports that a separate division for policy and planning has been created and a professional director has been appointed to head it. The purpose of this division is to develop long-term strategic and tactical planning for the office. According to the Attorney General's report, "One result of this new program is that each division is required to define clearly its objectives and to identify the methods and budget needed to obtain them. A second result is that many techniques, similar to those used by the most efficiently run businesses have been implemented in the Attorney General's Office." Finally, the Attorney General's report goes on to say that the third and most important result of this division is that "... the Attorney General has its first strategic plan. . . ." ⁶

In Hawaii, the need for planning has now been recognized, and tentative efforts have been made to identify some of the more immediate needs. The present Attorney General acknowledges that without continuing high level focus on the value of planning, it is difficult to relate day-to-day activities to long-range needs and objectives. She is attempting at present to develop objectives which are relevant to present day challenges of the legal services program with input from her supervisory staff.

Measures of effectiveness. As a corollary to the foregoing, we found also that the department currently lacks measures by which the effectiveness of the legal services program can be adequately and meaningfully assessed. This is not to say that the department has failed to develop any measures of effectiveness. According

6. Neil F. Hartigan, *Illinois Attorney General's Report for the Biennium 1983-84 and Opinions for the Year 1984*, Springfield, pp. 15-16.

to program documents, the established measures of effectiveness for the program are as follows:

1. Number of state cases settled out of court;
2. Number of state cases won as a percent of all cases brought to trial;
3. Percent of dollar amounts of settlements in suits against state;
4. Number of convictions as percent of criminal actions filed; and
5. Percent of legal opinions overturned in court to total issued.⁷

At first glance, these measures of effectiveness may appear to be adequate. Closer scrutiny reveals, however, that these measures are not always very helpful indicators of what the program might be seeking to accomplish. For example, the first measure seems to suggest a state objective to settle all cases out of court; hence, the more cases disposed of in this manner the better the performance of the program and of the department. However, this may not always be true. While for some types of cases out-of-court settlements may be desirable, they may be quite undesirable for other types of cases, even detrimental to the best interests of the State. For the latter category, then, a high rate of out-of-court settlements would reflect poor performance rather than good performance. In short, a much more precise or better defined measure than this is needed to assess the program's performance.

Similarly, the fifth listed measure standing alone does not provide a very meaningful gauge of the department's performance in rendering legal opinions.

7. Hawaii, *The Multi-Year Program and Financial Plan*, p. 1759.

While it is true that the department should not want to have very many of its opinions overturned, it is also true that many opinions are not subjected to court tests for long periods of time, if ever. In the meantime, it is not known whether the opinions could withstand court review or not. Nevertheless, under this measure they would all continue to be judged good opinions until actually overturned. At the same time, another very important concern to the recipients—timeliness in receiving legal advice—goes unmeasured. Indeed, in a survey of state departments, timeliness in receiving written responses to requests for legal opinions was mentioned as a problem by 11 of 12 departments surveyed. This suggests, then, that another more meaningful measure might be one which indicates the percentage of legal opinions issued within some specified time; e.g., one month after they were requested.

Standards for priorities. Also lacking are standards for determining priorities for the development and expansion of the program. Considering the multiplicity of services the department seeks to provide, priorities need to be established for the program.

Since there are no standards for determining priorities, the department has, in many cases, reacted to public pressures rather than take the initiative in planning. For example, the formation of the Criminal Justice Division appears to have been aimed partly at blunting criticism that the department was not doing enough to combat increasing problems associated with illegal use and production of marijuana and drugs throughout the islands.⁸ However, this action was taken without defining what role, if any, the State should play in this area of law enforcement.

8. Hawaii, Department of the Attorney General, "Attorney General's Criminal Division," Honolulu, no date.

Even within existing activities, not all cases and not all legal issues are of equal importance. Some have much greater financial implications than others. Some are much more important than others in terms of setting legal precedents. Some have much greater policy significance than others because they are more directly related to the social objectives of our community; e.g., enhanced equality of treatment and opportunity, more stringent protection of our environment, and more attention to the rights and needs of consumers. However, the department has no guidelines to help it determine where and to what extent priorities should be set relative to these various influencing factors.

Recommendations

We recommend that the Department of the Attorney General incorporate an effective planning function into the overall management of and budgeting for the legal services program.

Once this first step is taken, we further recommend that the Department of the Attorney General formulate a comprehensive plan for the legal services program which specifies in reasonable and realistic detail program objectives, program priorities, program measures of effectiveness, and the bases for program activities as selected among available alternatives. This program plan should be in such a form that it can be regularly reviewed and updated and can serve as the foundation for the budgeting of the legal services program.

Chapter 4

OVERALL ORGANIZATION AND MANAGEMENT OF THE LEGAL SERVICES PROGRAM

A program's organization and management determine to a great extent how well resources allocated to the program are utilized. This chapter looks at the overall organization and management of the Department of the Attorney General and their impact on the use and disposition of resources allocated to the legal services program.

Summary of Findings

1. During the past several years the department has been undergoing extensive organizational and management changes without complying with the executive branch requirements for effectuating such changes. As a result, the department's actual organization varies considerably from its formal, approved organization.

2. With frequent changes at the top and with no strong subordinate administrative manager to provide support and continuity, the department has been hampered by the lack of continuity in overall leadership and by the minimal coordination of the various subunits. As a consequence, divisions, and even units within divisions, tend to be isolated and tend to operate in an autonomous manner.

3. There is a need to clarify the roles and responsibilities of supervisory personnel. At the present time, some confusion exists regarding the specific kinds

and levels of management control and operational control decisions that are to be made by supervisors.

4. Adequate policies and procedures are lacking for the effective conduct of the critical function of providing legal advice and interpretations to the various organizations of state government.

Some Background

In general, the structure of an organization defines and shapes the way managerial tasks are performed to accomplish objectives common to the organization as a whole. It describes the component units, their functions, and their relationships to one another. Since the structure is intended to facilitate the managerial processes necessary to accomplish the organization's objectives, its design and any changes in design must take into account these organizational objectives, the programs to be conducted, and the management processes to be employed.

The department has grown to the point where it is now one of the largest "law firms" in the State, administers a multimillion dollar annual budget, maintains a staff of over 200 (including over 150 full-time employees of the legal services program alone), and provides a multiplicity of legal services. Along with its counterparts in other states and with the legal profession in general, the department is subject to a number of shifts and trends which significantly affect the need for and delivery of legal services in both the public and private sectors.

Under these conditions, the department and its legal services program should have an organizational structure and management processes which are geared to

achieving designated departmental and program objectives but which can also accommodate change.

Recent Organizational and Management Changes

In Chapter 2 we note that a divergency exists between the "approved" organization of the department and its legal services program and the "actual" organization of the program. The reason for this difference is that the department and program have been undergoing extensive organizational and management changes during the past several years without going through the established administrative process for effectuating such changes.¹

As can be seen in the approved and actual organization charts included in Chapter 2 (Figures 2.1 and 2.2), the legal services program consists officially of 8 organizational divisions but is actually made up of some 10 divisions. This divisional proliferation beyond the original set of eight has occurred gradually through an erratic process. For example, when we initiated our review, there was an eleventh division which consisted of three units encompassing antitrust matters, the University of Hawaii, and the Hawaii Housing Authority. However, the official organizational chart showed the antitrust unit paired with the litigation unit. The reason for the splintering off of the antitrust unit and its subsequent recombination with the two other units to form a separate division is difficult to understand

1. Administrative Directive 78-4 governs the process for making organizational changes within executive departments. The key element in the process is the review of proposed changes by the Department of Budget and Finance.

because of the disparity of the subject matter activities and the physical separation of the three units. It has since been learned that another recent shuffling of the divisions has resulted in the breakup of this division and the diversion of the University of Hawaii unit to the Administration Division, the Hawaii Housing Authority unit to the Regulatory Division, and the antitrust unit to the Commerce and Economic Development Division. This latest allocation may be more logical, but it is uncertain whether it will be any more permanent.

Efforts of the department's special committee. The department is well aware of the present disparity between its officially approved organizational plan and its actual operating plan. In 1983, it formed a special committee to study the organizational structure of the legal services program and devise a better suited structure. The committee solicited information from a variety of sources including state departments and agencies being serviced by the department, deputies and clerical staff within the department, former attorneys general, judges, members of the legal community, and counterpart agencies in other states. It concluded that under the present organization, ". . . increased demands on deputies to perform more detailed, specialized, and complex legal tasks had deteriorated the ability of the office to provide timely and accurate legal services."²

The committee recommended that the organizational structure be amended to replace the present divisions with four functionally oriented divisions. The reorganization plan was submitted to the Governor in December 1984 according to

2. Memorandum to the Honorable George R. Ariyoshi, Governor, from Michael A. Lilly, Attorney General, Re: Proposal to Reorganize the Legal Services Divisions, Department of the Attorney General, December 5, 1984.

Administrative Directive 78-4 and was approved. However, the plan was not implemented after its principal proponent, the then Attorney General, left the department. The present Attorney General has chosen not to implement the reorganization because so little time is left before her term of office ends. Nonetheless, the 1984 reorganization plan would be useful as a starting point for the consideration of organizational changes, if not by this administration, then by the next.

Results and consequences. The lack of a sound planning basis for organizing the legal services program has resulted in an organizational structure that is difficult to understand. While most of the department's divisions are based on client agencies, there are several divisions which do not fit this mold. The Litigation Division, for example, is set up on a functional basis. The Medicaid Fraud Division is something of a hybrid; while it specializes in the functional area of criminal prosecution, it also specializes in terms of a single client agency, the Department of Social Services and Housing. The Special Assignment Division actually does not function as a division; instead, it is a grouping of three deputies who function independently of each other.

Another consequence of the department's present approach to organization is that it tends to create "unofficial" organizational units which end up being second-class entities because they lack "official" status. When the department on one hand does not go to the Department of Budget and Finance (B&F) to obtain approval for the creation of new organizational units, it becomes more difficult on another hand to go to B&F to seek staffing and funding for such new units. In the case of the Criminal Justice Division, it had to get by without any clerical support staff after it was created. It has also had to move twice and may be facing a third

move. It has had to struggle constantly to secure additional legal staff. It still remains in a very tenuous position.

Overall Leadership and Coordination

The legal services program has not been receiving adequate overall leadership and coordination on an ongoing and consistent basis due in great part to: (1) frequent changes at the top in recent years, and (2) the lack of a strong subordinate manager to provide needed support and continuity.

Turnover in Attorneys General. During the past five years, there have been four different Attorneys General. With each occupant of the office having his or her own ideas as to how the department and program should be run, it is virtually impossible to maintain any consistent and clear direction in the face of this frequent turnover at the top.

Limiting the influence of the "short termers" in the Attorney General's position is the fact that it takes time for a person to become familiar enough with the department and legal services program to know what kinds of changes should and can be made. Until this knowledge and confidence are gained, the Attorney General is unable to effectively formulate his or her own policies and procedures and provide the necessary leadership and direction for the department and program. Frequent turnover in the top position, therefore, tends to dilute the authority of each successive occupant and to prevent the development of strong leadership for the department.

Lack of a strong administrative manager. A major disadvantage facing each new Attorney General in Hawaii, particularly someone previously outside the department, is the fact that there is no one within the department knowledgeable

enough about departmental operations, cognizant about policy issues of the entire legal services program, and possessing the appropriate authority and responsibility, who can effectively advise and inform the Attorney General during the initial transitional period. Even the department has recognized this deficiency. In 1984, in a report on departmental goals, the former Attorney General stated:

"This office needs an administrative director in a position of authority to run the operations and administration of the office of the Attorney General. A major problem of our office is the lack of person with that job description. This position should be established and a qualified person hired this fiscal year."³

However, it was not until the 1986 legislative session that the department received approval for such a position. At present, the position is yet to be filled, and there is still no chief of operations to provide the Attorney General with needed support and continuity in overseeing what is becoming an ever larger and more complicated administrative activity.

Actually, this type of support is needed in many areas in the legal field, both private and public, but is only now becoming clearly recognized. Until recently, the practice of law was not thought of in terms of it being a business and management activity. However, with an increased awareness of the business and management aspects of legal services, more law firms, legal service agencies, and attorneys have begun to realize that an attorney's professional training does not usually include management or business training. As a result, many private law firms and even public law agencies such as the State Judiciary, the Office of the U.S. Attorney in

3. Memorandum to Brad Mossman, Office of the Governor, from Attorney General, Subject: Departmental Goals Update—Memo No. 84-7, July 10, 1984.

Hawaii, and Oregon's Department of Justice have established positions of legal administrators or administrative executives.

Although the department has an administrative services officer, that individual is primarily responsible for the support services of the department. At present, the administrative services officer position has neither the organizational stature nor the authority to assist in exercising operational control and making strategic decisions.

In one of the private law firms we visited, a chief executive officer had been hired to be responsible to the partnership for the following:

1. The overall direction of the law firm's activities.
2. The general management of day-to-day operational activities.
3. The development of short-range and long-range objectives.
4. The development of professional and staff budget programs to achieve objectives.
5. The development of marketing strategies to achieve objectives.
6. The proposal of policies and procedures to effectively assist professionals to achieve objectives.
7. The effective implementation of policies approved by the partnership.

In addition, the chief executive officer had the authority to approve staffing, new hires, promotions, terminations, beginning salaries, and salary adjustments, as well as equipment purchases, loans, leases, construction contracts, and independent contractors. The intent was to free the attorneys from the non-legal administrative duties of the law firm and allow them to practice law.

This trend towards the separation of actual legal work from the business and operational management aspects of legal services has been gaining in popularity not

only in private law firms but in public law offices as well. For example, one of the major recommendations of the Blue Ribbon Commission appointed to study the structure and organization of the Connecticut Office of the Attorney General was that the state "create a new Senior Executive position of Chief Administrative Officer for the Attorney General's office, to be filled by a person who will be directly accountable to the Attorney General."⁴ The Commission recommended that the executive have a strong business management and finance background and be responsible for the administrative and planning matters for the office. It also concluded:

"... a good lawyer is not automatically a good, or even adequate, office manager or administrator. We strongly recommend that the business management side of the Attorney General's office be assigned to a trained management executive."⁵

Another example is the State of Minnesota where the Office of the Attorney General has an administrative manager as well as an executive assistant to the Attorney General. The administrative manager directs the administrative service functions of the office; prepares, obtains approval of, and controls its budget; assists in the direction of its operations; and performs other duties as the Chief Deputy Attorney General may delegate or assign. The executive assistant serves as the Attorney General's primary policy advisor and legislative liaison. The executive assistant participates in and advises on staff management matters relating to the strategic and legal decisions of the Office of the Attorney General. While the

4. Connecticut, *Report of the Blue Ribbon Commission: Structure and Organization of the Connecticut Office of the Attorney General*, appointed by Joseph I. Lieberman, Attorney General, Hartford, July 18, 1983, p. 15.

5. *Ibid.*

executive assistant is required to be experienced in governmental affairs, the individual may or may not be an attorney.⁶

Separateness of units. The result of the lack of stability in the position of Attorney General and the absence of a strong subordinate administrative manager is a department and program which are quite fragmented. In addition, the housing of legal staff in several geographic locations serves to reinforce the separateness of the individual divisions and units rather than to encourage cooperation and a departmental esprit de corps.

During our interviews with the deputies, we found that most of them tended to identify with their respective divisions rather than with the department as a whole. Even when questions were posed about the department in general, many deputies tried to rephrase the questions so that they replied only in terms of their own divisions. Hence, the replies were typically prefaced with the phrase, "I don't know about the Department, but in my division . . ." In fact, the prevailing attitude of most deputies appeared to be in terms of "them" and "us," with "us" being their own divisions and "them" being everyone else in the department.

This attitude is often accentuated by the relative isolation of many of the divisions. Although the supervisors meet regularly with the Attorney General and the First Deputy Attorney General, there is little opportunity for other deputies to get together. Communication is not routinely encouraged among the various divisions, and relationships outside of one's own division are usually developed only if a deputy takes the initiative to seek out deputies assigned to other divisions. This

6. Minnesota, Office of the Attorney General, "Position Description, Executive Assistant to the Attorney General," St. Paul, November 1984.

is particularly true for deputies who are housed in client agencies or departments and who have little, if any, contact with other members of the department's legal staff. Even within a division, the problem of isolation may become acute since some divisions are subdivided into units which are housed in different geographic locations.

As a result of this divisional isolation, the opportunity for cross-training of deputies is lacking. Although deputies who have developed specific expertise can and do offer assistance when they are asked, it remains incumbent upon the individual deputy first to find out who has particular expertise, and then, to seek such persons out. Even in instances where deputies may work cooperatively, such as a tort case where the litigation attorney is in charge, the client department deputy is not routinely involved although he or she may be able to assist or learn from the case.

Need to Clarify Roles and Responsibilities

There is a need to clarify management roles, powers, and duties in the department. At present, administrative authority and responsibilities are loosely and vaguely distributed among the Attorney General, a First Deputy Attorney General, a number of supervising deputy attorneys general, one "director" (of the Medicaid Fraud Division), several "senior" deputy attorneys general, an administrative services officer, and a supervisor of the Investigative Division.

Our review finds that the roles and responsibilities of supervisory personnel within the department have not been clearly defined. Consequently, there is confusion regarding the specific kinds and levels of management and operational control to be exercised by supervisors. Moreover, considerable variation exists not

only among the responsibilities and activities of the supervisors but also in their interpretations of what they should or should not be doing.

Supervisory authority at the divisional level. The divisional proliferation of the department has not been accompanied by any clear or consistent pattern in the delegation of authority and responsibility to the divisional supervisors. This has led to uncertainty as to what supervisors can and should be doing with respect to program management and operations.

Take, for example, the hiring of new deputies. Some supervisors report that this lies entirely outside of their hands while others say that they play a prominent role in such decisions. Previously, the general pattern seems to have been for supervisors to screen and interview prospective deputies and then pass their recommendations on to the Attorney General for ultimate approval of each proposed hiring. For all intents and purposes, it seems to have been the supervisors who actually made the selections and did the hiring.

Now, however, some supervisors seem to be unclear about their role in the hiring process. At least one supervisor is under the impression that supervisors are not allowed to make initial contacts with prospective legal staff even if they receive inquiries from interested applicants. Yet, there are other supervisors who have specifically recruited on their own and who have received permission to hire deputies whom they have selected. It can make quite a difference in their authority and responsibilities, of course, whether or not supervisors have the ability to exert influence over the hiring of new staff. Hence, this is an area where there should be clear and consistent departmental policy.

Variations in the exercise of supervisory responsibilities and activities. In the absence of any clear guidelines concerning the role of divisional supervisors,

considerable variations are occurring in how the different divisions are being managed and operated. In interviews with all of the divisional supervisors and many of their subordinates, we sought to determine in percentage terms how the supervisors divided up their time and attention among nine categories of activities, ranging all the way from directly handling civil court proceedings to supervising other deputies. The results we obtained were quite diverse.

Division supervisors stated that the majority of their time was spent in the supervision of other deputies. However, the amount of time spent ranged from a low of 25 percent to a high of almost 100 percent, with the average being around 60 percent. The activity which ranked a distant second was "providing legal opinions and advice to the governor, legislature, judges, and state departments and officers." The supervisors indicated that the amount of time they spent in this activity ranged from a low of less than 1 percent to a high of 30 percent, with a median of nearly 11 percent.

It should also be noted that in addition to the ten recognized divisional supervisors, we found that many divisions also have unofficially designated "senior deputies" who assume varying degrees of supervisory responsibility. One senior deputy reported spending nearly 30 percent of the time supervising other deputies while another indicated that 75 percent of the time was spent in supervision.

Since the complexities of the cases and the experience levels of the deputies vary, some variation in supervisory time is not unexpected. What is unusual, however, is that such a wide range of supervisory time exists.

There are no broadly established standards for how supervisors in the legal field should divide their time between supervisory and legal matters or what the ratios should be between supervisors and deputies supervised, but it is obvious that

these matters have to be addressed in determining the quality and quantity of supervision that should be provided. Involved here is not only a question about the amount and type of supervision, but whether supervision is necessary and desirable in all situations.

Although a lack of accurate workload data and adequate measures of effectiveness prevented us from drawing specific conclusions about supervision, our interviews with the supervisors yielded a wide range of opinions regarding what is needed in the way of supervision and what actually exists. One supervisor, for instance, expressed a feeling of responsibility for everything in the division from the production of the legal staff to the maintenance of a healthy work environment. Another works on the premise that deputies are professionals who need only minimal supervision. Most of the subordinates indicated they felt the present level of supervision was adequate, but many were quick to add that, except for policy matters, only minimal supervision was being exerted and more was really not necessary. Several commented, too, that when they felt the need for help, they sought out the assistance of experienced staff members, who might not necessarily be their supervisors. One deputy said it was difficult to approach a supervisor for help in a case when that particular supervisor did not go to court or carry cases and thus was in no position to offer practical advice or assistance.

From the supervisors' perspective, one supervisor expressed frustration about not being able to spend enough time on legal work due to supervisory responsibilities. Another said that being in a supervisory position forced an individual to become an administrator rather than an attorney and diverted one from doing the type of work for which he or she is best qualified. Both supervisors and

subordinates expressed dissatisfaction based on their perception that increased salary and benefits seemed to come only through promotion to a supervisory position.

Supervisory problems relating to the clerical support staff. Problems of defining supervisory roles and responsibilities also extend to the clerical support staff. At present, the department has three stenographic pools: Steno Pools A, B, and C. Steno Pool A provides support services to the Litigation, Administration, and Special Assignment Divisions. Steno Pool B services the Regulatory and Social Services Divisions. Steno Pool C offers clerical support for the Land/Transportation Division. Other divisions and units have their own separately assigned support services. Steno Pools A and B are located in the Capitol where the bulk of the department's personnel are still housed while Steno Pool C is located with the Land/Transportation Division in the Kekuanaoa Building.

According to the approved organization chart for the department, all three stenographic pools are placed under the supervision and control of the Administrative Services Office (ASO). In addition to the 27 legal steno, clerk steno, and clerk typist positions assigned to the three stenographic pools, ASO is also supposed to exercise indirect supervision over the 16 other stenographic and clerical positions scattered throughout the legal services program. Combined with the 11 positions in ASO itself, the head of ASO has direct or indirect supervisory responsibility for over 50 positions.

In fact, however, supervision by ASO and its head is very limited while the stenographic pools exert a considerable degree of autonomy. Although Steno Pools A and B are located close to ASO, we found that they both operate for the most part quite independently of ASO. Being physically much farther removed from ASO, Steno Pool C is almost completely independent from ASO. Several factors

contribute to this condition of virtual nonsupervision on the part of ASO. *First*, ASO has more than enough work to keep it busy just handling the financial and personnel business of the department. *Second*, there is no one in ASO who is familiar enough with the operations of the stenographic pools to be able to provide assistance or to exert effective authority. *Third*, geographic separation constitutes a serious barrier for Steno Pool C at present, and will do likewise for Steno Pool B if all or part of it moves to the Kekuanaoa Building as has been proposed.

The net result is that the stenographic pools end up being supervised by their respective supervising legal stenographers and by the supervisors of the assigned legal services divisions. This arrangement has several drawbacks. *First*, it puts the actual organization at odds with the formally approved organization. *Second*, it subjects the stenographic pools to two or more, and perhaps conflicting, sources of authority and responsibility. *Third*, it adds to the supervisory burdens of some of the legal services supervisors who may or may not be prepared for and attuned to taking on such added supervisory responsibility. *Fourth*, and probably most important, it prevents systematic planning for and coordination of the use of clerical support services. The absence of such planning and coordination results in an uneven and inequitable distribution of workload among the clerical staff which we examine in more detail in the next chapter.

Policies and Procedures

Along with an effective distribution and delegation of supervisory authority and responsibility, an organization also requires adequate policies and procedures to establish the framework within which the work of the organization can be properly

conducted. Our review indicates the department lacks adequate policies and procedures over a critical function: that of being legal counsel to the rest of the state government and providing other parts of this government with legal advice and interpretations of the laws affecting them. Unless and until tested in the courts, this legal advice and interpretation can set the boundaries within which action can be taken and can determine what, when, and how government may decide to do or act. Therefore, the department should have a very clear and efficient process for receiving and responding to requests for legal advice and interpretation.

To the extent a formal process has been established for this activity, it is set forth in a document entitled: *Handbook, Department of the Attorney General, State of Hawaii, 1981*. According to this document, requests are received and routed to appropriate subject matter deputies for preparation of initial drafts of the written responses. After a deputy completes the draft of a response to a particular request, the draft then goes through an internal review process before it is issued.

As prescribed, the review process goes from a deputy to the supervising deputy. From there it goes to the deputy who has the job of reviewing all drafts of legal advice before they go to the Attorney General for review and action. Legal advice designated as an "Opinion" is issued by the Attorney General and is subject to publication and filing requirements established by law. However, not all legal advice takes the form of an opinion; some advice is provided in memorandum form which apparently does not have to comply with the publication and filing requirements and can be issued by members of the department's staff other than the Attorney General.

At the time of our review, the procedure had been amended to include the First Deputy Attorney General in the review process although the handbook has not been updated to reflect such a change. Still other complications burden the process.

A major unresolved issue centers on the question of what kinds of matter have to be dealt with as opinions and what kinds can be handled in memorandum form. Closely related to this is the question of whether all advice must go through this review process or whether opinions only are subject to the process. Neither of these questions has been definitely answered. They have, however, been the subject of discussion at supervisors' meetings held within the department. At one of these meetings, the First Deputy Attorney General took the position that all interpretations of state law were subject to the review process. At least one supervising deputy took strong exception to such a blanket view, stating that almost everything written by the department would be covered by it. This, in turn, would defeat the purpose of having some memoranda reviewed and handled by the divisional supervisors. The policy issue was not clearly settled; instead, it was suggested that everything be submitted for review as a matter of courtesy.⁷

The absence of clear departmental policies and procedures relating to opinions and other legal advice has produced a situation where the individual divisional supervisors make the actual determinations of how various matters will be handled. Some may channel almost everything through the review process while others may avoid the review process as much as possible and handle many matters through the advisory memorandum procedure. Leaving these determinations to be made at the divisional level tends to undermine the review process and its intended purpose of ensuring improved quality and consistency through internal coordination.

7. Hawaii, Office of the Attorney General, "Opinions, Advisory Memos," *Minutes of Supervisor's Meeting*, Honolulu, September 11, 1984, p. 2.

Another problem with the opinion review process is its time-consuming nature. Both deputies and those requesting advice have expressed frustration over the length of time it sometimes takes to obtain a response to a request for advice.

Deputies complain that there are too many levels of review and that too often drafts go up and down the ladder of review several times before a final form is agreed upon—sometimes because of such minor things as the margins not being correct or the inclusion of certain words or phrases which individuals in the review process may find objectionable.

Due to the lack of accurate data, we did not perform any detailed analysis whereby the timeliness of the department's responses to requests for legal advice could be determined. However, enough dissatisfaction in this regard was expressed by affected parties both inside and outside of the department to indicate that this is an area deserving priority attention.

Recommendations

With regard to the overall organization and management of the Department of the Attorney General and the legal services program, we make the following recommendations:

- 1. In anticipation of the change in administrations that will occur following the 1986 gubernatorial election, early efforts should be initiated to develop a sound basis for an eventual reshaping and reorganization of the Department of the Attorney General and its legal services program. The objective should be to provide the new incoming Attorney General with an overall framework for organizing and managing the Department of the Attorney General and the legal services program based upon a thorough and carefully considered review and analysis of departmental*

and program goals, objectives, current organization and operations, needs, and potentialities.

2. In the meantime, however, the Department of the Attorney General should take appropriate steps in cooperation with the Department of Budget and Finance to comply with existing statutory provisions and administrative directives regarding the organization and management of the Department of the Attorney General and its legal services program.

3. Recognizing that some physical consolidation of its operations would be desirable regardless of whatever other organizational and management changes might be proposed, the Department of the Attorney General, with the cooperation and assistance of the Department of Accounting and General Services, should begin immediately to explore ways and means of centralizing in a suitable location some of its widely scattered operations. This is particularly true for those operations for which a decentralized approach does not appear likely or suitable.

4. In any steps taken to revise and revamp the Department of the Attorney General and its legal services program, priority attention should be given to establish the position of an administrative director or chief of operations to strengthen the leadership role of the Attorney General through the provision of top-level support and continuity.

5. In any organizational and management restructuring that may be undertaken for the Department of the Attorney General and its legal services program, careful attention should be given to the kinds of supervision most appropriate to departmental and program needs, to the levels and numbers of supervisors required, and to a clear definition of the roles of supervisors.

6. *Priority attention should be given to the review of the whole process of rendering legal advice, from the point of receiving requests to the point of actually responding, to ensure timely and quality services to the department's clients.*

Chapter 5

PERSONNEL MANAGEMENT FOR THE LEGAL SERVICES PROGRAM

As reflected by the high proportion of total expenditures for the legal services program accounted for by personnel and personal services costs, the practice of law is a labor intensive industry. It also means that personnel administration represents a significant area of resource management for the legal services program. In this chapter, we review personnel management in the Department of the Attorney General as it impacts the legal services program. In doing so, we focus on program activities relating to recruitment, classification and pay, work environment, training and career development, and performance evaluation.

Summary of Findings

Our findings are as follows:

1. A key unresolved question is whether or not or the extent to which a career-type service will be utilized by the Department of the Attorney General with regard to its professional staff.
2. The legal services program has been experiencing relatively high personnel turnover among both its legal and clerical staff. While some degree of turnover is unavoidable, the department needs to address the personnel management factors contributing to these high rates.
3. The legal services program has been hampered by a number of shortcomings in personnel management. Improvements are needed to provide for the following:

- a. A systematic approach to the recruitment of qualified personnel.
- b. A system of classification and compensation which provides career advancement opportunities to attract and retain the best qualified personnel.
- c. A satisfactory professional work environment for all employees.
- d. A comprehensive approach to training and career development for program personnel.
- e. A comprehensive and consistently applied system of performance evaluation.

Role of Personnel Management

In terms of number of staff, the department is not particularly large when compared to many of the other state executive departments. Nevertheless, it has a larger than normal responsibility in the area of personnel management. This derives from two interrelated factors: (1) legal services is a labor intensive field which requires a fairly high degree of training, expertise, and experience; and (2) the department has to manage two groups of employees, one of which (mostly clerical personnel) is subject to all the requirements and procedures affecting civil service employees throughout the state system and the other of which (the professional legal staff) is subject to the department's own particularized personnel policies and procedures due to exemption from civil service coverage and exclusion from the collective bargaining process. Approximately 40 percent of the department's employees fall into the first category while 60 percent fall into the second.

Taken in combination, these two factors mean that the department must be able to interact with the Department of Personnel Services (DPS) and a very elaborate statewide personnel system when dealing with one large group of its

employees, but it must also be equipped to develop and implement its own set of personnel policies and procedures with respect to an even larger group of its employees.

Despite this large and complex personnel management responsibility, not enough attention is being paid to personnel management matters. The department's one personnel technician is kept more than occupied just handling routine personnel transactions. There is no person at present who can do any overall planning and development in such areas as recruitment, classification and compensation, training, maintaining suitable working conditions, etc.¹

Probably contributing to this situation is the fact that there is little or nothing in the training or background of most attorneys to prepare them for carrying out this responsibility. Hence, many of them do not recognize what may be needed in this area or that the area requires attention.

This particular shortcoming might be overcome if there were someone else at a high management level who was attuned to the importance of personnel management and who recognized what kinds of expertise are required to carry out this responsibility effectively. As noted in an earlier chapter, however, the department lacks a general manager or director of operations. Without an executive of this type, personnel management is likely to continue to receive inadequate attention.²

1. Under Act 245, SLH 1986, the department will have authorization to hire a personnel management specialist who will have responsibility to do overall planning and development for personnel management.

2. The 1986 Legislature provided funds for an executive assistant and a secretary for the legal services program starting in FY 1986-87.

Even with such an executive, there would still be the need for a specialist in personnel management who has the necessary expertise and skills to plan and oversee the execution of a broad program of personnel administration covering the areas considered later in this chapter. This will not relieve the need for a technician to handle all the paperwork involved in personnel administration. Indeed, the workload in the personnel actions area will probably increase with the development of a more comprehensive personnel management program for the department.

In short, if personnel management for the legal services program is to be carried out effectively, it must be viewed as a vital part of the department's top level management responsibility. In this regard, one of the most important issues that will have to be resolved is that relating to the status and nature of employment for the members of the department's professional legal staff—that is, whether or not or the extent to which this employment should be treated as a career-type service.

A career service legal staff? When considering whether or not a career service approach should be taken to the department's legal staff, it is important first to understand what is meant by the concept of a career service and then to examine how the concept might be applied in this particular situation.

1. *The meaning of a career service.* In broadest terms, a career service is a personnel management system whose purpose is to obtain qualified people for relatively long-term employment.³ To achieve this purpose, a career service

3. Hawaii, Department of Personnel Services, *Employee Development and Training Manual*, Honolulu, 1963.

fosters opportunities for employees to advance within the organization and to grow and develop professionally. A career service also pays reasonably competitive salaries, rewards meritorious work, and takes corrective action for less than satisfactory work. The system provides fair ways to evaluate the work of its members and an environment conducive to that work.⁴ A career service also implies a personnel program that is comprehensive enough to carry out these management responsibilities. The underlying assumption is that the procedures for the different aspects of the program are uniform and fair.⁵

Although a civil service system may promote a career service, the two concepts are not synonymous. Government attorneys, along with professional employees such as physicians, professors, and scientists, fall into a separate category of employees whose jobs are valued somewhat differently from jobs within the civil service. Because the individual incumbent's personal competence influences pay, the normal job evaluation and pay principles applicable to most positions in the civil service do not apply.⁶ Rates of pay are also influenced by competing private organizations who may vie for the services of qualified employees. In the federal sector, career attorneys are in the "excepted" service, not in the competitive (civil) service. Their method of entry is different, and they

4. Federal Interprofessional Forum, "Career Professionals in the Federal Service—Navigators of the Ship of State," *Federal Bar News & Journal*, Vol. 32, No. 9, November 1985.

5. Section 76-1, HRS.

6. Rosemary Storm, "Special Pay Schedules," in Harold Suskin (ed.), *Job Evaluation and Pay Administration in the Public Sector*, International Personnel Management Association, Chicago, 1977.

do not have the procedural and substantive protections available to civil service employees when threatened by adverse action.⁷ As noted earlier, the department's deputy attorneys general are among the State's professional employees who are exempt from civil service.

2. *The merit principle.* Central to the idea of a career service is the merit principle. In theory at least, the merit principle emphasizes the selection, advancement, and retention of employees on the basis of their qualifications and performance.⁸ In the literature, a career service system is said to be based on merit (as opposed to seniority or political considerations). For example, a Federal Bar Association resolution recently called for primary weight to be placed on merit, defined as a "combination of qualities of the highest intellect, integrity, experience, character, personality, legal ability and legal skills," over and above political affiliation in the selection of U.S. attorneys for the federal career service.⁹ Another example of the close association of the two concepts is found in Chapter 76, Hawaii Revised Statutes, which speaks of building a career service in government based on merit principles.¹⁰

3. *The desirability of a career service.* In attempting to answer the question of whether a career service is desirable for the department's legal staff,

7. Marvin Morse, "A New Stride in Protecting Federal Attorneys," *Federal Bar News & Journal*, Vol. 32, No. 7, September 1985.

8. Winston W. Crouch, *Local Government Personnel Administration*, International City Management Association, Washington, D.C., 1976.

9. Helen Lessin Shaw, "History as Prologue: FBA Resolutions and Studies 1928-1985," *Federal Bar News & Journal*, Vol. 32, No. 9, November 1985.

10. Section 76-1, HRS.

we considered a number of basic assumptions cited in the professional literature and underscored in our review of the department's personnel management. *First*, the degree of professional expertise needed to achieve the department's program objectives requires a capable and dedicated cadre of professional employees. The department's legal work is highly specialized. Public resources are at stake, and the State is entitled to the best legal advice and representation it can obtain.

Second, if past turnover trends continue, the department can expect to lose more than a quarter of its legal staff each year, including many deputies who have been with the department from three to five years or more. Because the practice of government law is not usually covered in law schools, the department must expend time and resources to properly orient and train new deputies.¹¹ Thus the loss of an attorney is always costly to an organization in terms of recruiting costs, training period, workload for remaining staff, and lost time for those who orient and train new hires.¹² Our interviews with department staff reveal concerns for a number of conditions frequently cited in the literature as contributing to high turnover.

Third, it is highly unlikely the State can match the compensation of private firms, be impervious to the lures of private practice, or be immune from those who will use the office as a stepping stone to more lucrative work elsewhere. In other words, simply paying an attorney more will not guarantee the retention of competent staff.

11. David I. Tevelin, "A Modest Proposal . . . Our Law Schools Should Teach 'The Practice of Law,'" *Federal Bar News & Journal*, Vol. 32, No. 9, November 1985.

12. Wade Hampton, "Associate Turnover: Why They Leave and Why They Stay," Parts I, II, and III, *Law Office Economics & Management*, Vol. 24, No. 3, Fall 1983; Vol. 24, No. 4, Winter 1984; and Vol. 25, No. 1, Spring 1984.

In light of the foregoing, we feel it is desirable to consider a career-type service for the department. By this is meant a personnel system where persons are selected on the basis of qualification, where satisfactory compensation and working conditions are provided, where employees are encouraged to grow and develop in their job capabilities, where employees are evaluated according to performance, and where performance is rewarded when warranted and corrective actions are taken when performance is not satisfactory. Although some turnover will likely continue to be an inevitable reality (as it also appears to be in large law firms in the private sector), there is some indication in the literature that it can be reduced by giving attention to a number of key personnel management areas implicit in a career service.¹³

However, even if a career service approach is not desired or felt to be appropriate for Hawaii's legal services program, the need for increased attention to personnel management still remains. In any organization, human relations deserve consideration. Therefore, under any circumstances, a minimum level of management attention should be given to personnel management for the legal services program.

Turnover of Personnel

Personnel turnover is inevitable, particularly in organizations where there is strong outside competition for qualified and specialized employees. In both public and private legal firms, turnover among attorneys has been recognized as a

13. John T. Stallworth, "Reduce Turnover in Your Firm," *Legal Economics*, Vol. 11, No. 6, November/December 1985.

persistent problem.¹⁴ In fact, a recent study cited the retention of associate attorneys as one of six major problems facing legal managers.¹⁵ Our review of the legal services program has found that the turnover rates for both the professional legal staff and the clerical staff have been quite high for at least the last five years. This has proven to be costly for the department in terms of money, time, efficiency, and effectiveness.

Turnover rates for the legal and clerical staffs. The results of our review of turnover rates for the legal staff and for the clerical staff of the department are set forth below.

1. *Legal staff turnover.* Counting both temporary and permanent positions, the department had 116 authorized deputy positions in 1985. For prior years, the number of deputy positions has fluctuated due to the department's practice of utilizing unauthorized positions which were funded through available nongeneral funds. Pursuant to legislative requirement, this practice has now been halted. For the five years covered by the period from January 1, 1981, through December 31, 1985, Table 5.1 shows the annual turnover rates of the deputies.

As this table shows, there has been a decline in the legal staff turnover from the high of 55 which occurred in 1981. Nevertheless, the number of deputies departing each year is significant. Our examination revealed that four positions experienced between five and six turnovers during the five-year period, or an average of more than one a year.

14. Wade Hampton, "Associate Turnover," Parts I and II.

15. *Ibid.*, Part II.

Table 5.1

Number of Turnovers Among
Deputy Attorney General Positions
January 1981 Through December 1985

Year	No. of Turnovers
1981	55
1982	26
1983	27
1984	39
1985	37

Source: Hawaii, Department of the Attorney General,
Administrative Services Office.

Frequency of turnovers has an obvious effect on the length of service time profile of the legal staff, an important consideration when looking at organizational stability and the experience level of the legal staff. Table 5.2 presents the legal staff's length of service profile as of November 1985.

Table 5.2

Length of Service Profile of the Legal Staff
of the Department of the Attorney General
as of November 1985

Years of Service With Department	Number of Staff	Percent of Total Staff in Department
25+	2	2
20+ - 25	1	1
15+ - 20	2	2
10+ - 15	11	10
5+ - 10	16	14
0 - 5*	76	71
TOTAL	108	100

Source: Hawaii, Department of the Attorney General,
Administrative Services Office.

*In this category are 30 attorneys with less than one year of service.

As Table 5.2 shows, only 5 among the 108 deputies have been with the department for more than 15 years. On the other hand, 76 (71 percent) of the deputies have been with the department for five years or less. Of the latter, 30 (27 percent of the total) have been with the department for less than one year. There is basis, then, for the frequent concerns expressed by client departments and agencies and by supervisors within the department that the rate is unduly high.

2. *Clerical staff turnover.* Job information on the clerical support staff for the legal services program indicates that turnover among this group has also been relatively high over the past five years. This is reflected in Table 5.3 which shows turnovers among 43 positions during the period from January 1, 1981, through October 31, 1985. Since these data were collected, six more clerical positions have been added.¹⁶

Overall, Table 5.3 shows that during the five years covered, there have been 97 turnovers among the 43 positions. This averages out to approximately 19 turnovers per year which represents almost one turnover per year for every two positions. However, as the table also reveals, turnovers vary considerably among work units within the department. Thus, for two positions in the Hawaii Housing Authority unit, there were 16 turnovers, or an average of 3 turnovers per year, for the five years in this two-position unit. For Steno Pool A, there were 36 turnovers, or an average of 7 turnovers per year, for this 12-position unit. For other units, however, the rate of turnover was much less.

16. During the 1986 legislative session, 12 permanent clerical support positions were approved for the legal services program.

Table 5.3

Number of Turnovers Among
Legal Stenographers and Clerical Staff
January 1981 Through October 1985

Unit	No. of Positions	No. of Turnovers*
Antitrust	2	4
HHA	2	16
UH	1	1
Commerce & Econ Dev	2	4
Criminal Justice	1	1
Labor	4	8
Medicaid Fraud	2	4
Steno Pool A	12	36
Steno Pool B	9	9
Steno Pool C	6	6
Tax	2	8
TOTAL	43**	97

Source: Hawaii, Department of the Attorney General,
Administrative Services Office.

*The data on turnovers include the one-day breaks in service for some individuals hired on an emergency basis which occur at the end of each 30-day emergency period. However, only a few individuals serve for more than two or three periods.

**Six legal steno positions have been added since October 31, 1985. (During the 1986 legislative session, 12 permanent support positions were approved for this program.)

Among individual positions, the variation in turnover is even greater. Thus, among the 12 positions in Steno Pool A, there were no turnovers at all in 5 of the positions during the five-year period. Among the remaining 7, however, the number of turnovers per position ranged from 1 to 14.

It should also be noted that the turnover rates for some positions may not be as high as these data indicate. This is because every emergency hire is counted as a turnover even though in some instances the same person may receive two or more successive emergency hire appointments. Due to a legal restriction, emergency hires can be employed only for a maximum of 30 days. Then, a one-day interval is required before another new emergency hire can be made. However, it is seldom that the same person stays on for more than one or two successive emergency hire appointments.

In summary, the turnover among the clerical support staff represents a serious problem for the legal services program but is an even more severe problem within particular parts of the program. Increasing this severity is the fact that individual clerical workers are assigned to specific deputies. With some clerical workers serving as many as four or five deputies, this means an interruption in the work flow for these four or five deputies every time a vacancy occurs. Frequent vacancies, then, can be extremely disruptive.

To exacerbate matters, the clerical support staff has not been increasing in numbers over the years in proportion to the increases in the number of deputies. The net result is a heavier and heavier workload being imposed upon a support staff, many of whom are relatively new and inexperienced. Maintaining production under these circumstances presents a tremendous challenge that would be hard to meet.

Effects of high turnover rates. In 1984 and 1985, the department had to pay out in excess of \$170,000 and \$95,000 in cashed-out vacation compensation for personnel leaving the department in those two respective years. The department reported that the payments cause serious problems with its budget.

To absorb these unbudgeted costs, the department had to generate other savings in its budget. To do this, it resorted to leaving vacant positions unfilled until such time as sufficient savings had been accumulated to offset the cashed-out vacation benefits. This, in turn, simply produced a further negative effect. Besides the loss of experienced personnel, the remaining workload ended up being spread among the rest of the staff.

Thus, for each vacancy that occurs, there is first the immediate interruption of work flow and the possibility of having to make a large pay-out for accumulated vacation time. Then comes the enforced vacancy time to accumulate savings when workload has to be redistributed among those still on the staff. Finally comes the recruitment of a replacement and the need to break in the new employee who, in all likelihood, lacks experience in the work to be performed. All of this cannot help but detract from program effectiveness and efficiency.

Factors contributing to the turnover problem. The question that rises in face of a turnover problem is, why is the problem occurring? The literature on why people leave organizations frequently relate turnover to management factors such as opportunities for advancement, understanding and commitment to the organization's goals, fair compensation, and participation in decisions.¹⁷ The few studies done specifically on legal professionals indicate that attorneys leave their jobs for the same reasons as other skilled professionals.¹⁸ In one recent survey of lawyers in private firms, the factor most frequently cited was the presence of

17. Rensis Likert, *The Human Organization: Its Management and Value*, McGraw-Hill, New York, 1967.

18. Wade Hampton, "Associate Turnover," Part II.

better career opportunities elsewhere. This was followed by dissatisfaction with work and the lack of training opportunities. Fourth in importance was the amount of compensation.¹⁹ In the federal sector, the Federal Bar Association recently identified problems with the merit pay program and its performance appraisal system as among those factors affecting the morale of federal attorneys.²⁰

Realizing that those most directly involved could help shed light on the problem, we interviewed a fairly broad cross section of both the legal and support staffs, talking in detail to nearly half of the legal staff and about one-third of the support staff. Among deputies, four factors most frequently cited as contributing to high turnover were: (1) comparatively low salaries, (2) lack of opportunity for career advancement, (3) poor working conditions, and (4) being caught up in a situation where morale was poor.

Among the clerical staff, three similar factors were given. These were: (1) heavy use of emergency hires to fill vacant clerical positions, (2) lack of opportunity for advancement within the legal clerical field, and (3) salaries which were not felt to be competitive with the salaries in the private sector.

Recruitment

Recruitment not only is the beginning of the personnel management process, but it is also key to an effective system of human resources management. The quality as well as the quantity of persons brought into the organization largely

19. *Ibid.*, Part III.

20. Helen Lessin Shaw and Jan Miller, "Government Lawyers—Employees 'At Risk,'" *Federal Bar News & Journal*, Vol. 29, No. 2, February 1982.

determine what can be achieved with those persons after they are on the payroll. This is particularly true in professional areas, such as legal services, where individual performance is so important.

Legal staff recruitment. The large private law firms and public legal services agencies which we surveyed devote considerable attention, effort, and resources to the recruitment of legal personnel. This is in recognition of the fact that not everyone who holds a law degree or is a licensed attorney will necessarily make a good lawyer or will be suited to the particular type of legal work handled by the recruiting organization. Thus, talent is more likely to be obtained if it is actively sought and properly assessed than if the organization simply waits for applicants to come to it. Public agencies have a further responsibility with respect to recruitment. In the interest of fairness and equal opportunity, they have an obligation to ensure that all qualified potential applicants are afforded equal access to and consideration in the filling of openings.

When we looked at recruitment for legal staff for the legal services program, we found that the department lacks an organized approach to finding the best available candidates. Due in large part to the absence of policy, recruitment practices are inconsistent and variable. The present practice of the department is to rely on word of mouth or wait for interested attorneys to submit resumes. Unlike private law firms who regularly recruit among law students and graduates (screening, for example, summer law clerks for possibilities), the department does not have a planned recruitment program to seek out promising students. Vacancies are rarely advertised in the public sector. Recent efforts to fill positions have become increasingly narrow in the scope of search and limited in terms of numbers of persons considered.

At present, there are no policies or procedures relating to position vacancies. It has been the department's usual practice first to announce position vacancies in-house and subsequently open them to the public. However, even this practice is not consistently followed. In some cases, attorneys from the outside were brought in to fill these positions without giving deputies a chance to be considered. In other cases, in-house selections have been made without open competition. By not being open in its recruitment process, the department not only risks lowering staff morale but also opens itself to accusations of unfairness and favoritism.

The department has not developed procedures which are consistently, and thus fairly, applied to all applicants. At one time, there was a two-tiered screening process whereby two committees were responsible for screening applicants. Similar screening is done in such public sector agencies as the Hawaii County Prosecutor's Office and the Regulated Industries Complaints Office. At present, the method of recruitment varies among the department's divisions and supervisors. In some instances, division supervisors actively recruit, and their selections are approved by the Attorney General. In other instances, the supervisors have no input into the recruitment process, and they are simply assigned new deputies. In at least one division, the client agency has had a determining voice in the selection process.

The recruitment procedures of the Office of the U.S. Attorney in Hawaii provide a contrast to the approach utilized by the department. This office has a vigorous program to find qualified attorneys. In addition to local candidates, the office recruits among people who have left Hawaii to study on the mainland and have remained there to practice law in major metropolitan areas. Recruitment efforts result in a large number of choices from which the office may make its selection. Screening and selection procedures are equally detailed and lengthy—for

example, a minimum of 15 references are questioned in detail. Of the last seven attorneys hired, only two had made direct application. The administrative officer coordinates recruitment; the U.S. Attorney reviews and selects.

Many private law firms in the community are also aggressive in their recruitment efforts, though sometimes more narrow in the scope of their search by virtue of focusing almost entirely upon the products of a limited number of law schools. What this means, however, is that if the department is to compete with other employers in obtaining top quality talent, it will have to take a much more organized and aggressive approach to its recruitment of personnel.

Clerical staff recruitment. The department faces a different situation with respect to its recruitment of clerical personnel. Inasmuch as clerical employees fall into the civil service category, they are subject to all the laws, rules, requirements, and limitations imposed upon civil service employees. Instead of being able to handle the entire recruitment process in-house as is the case with the legal staff, the department must work through and rely upon the Department of Personnel Services in its recruitment of legal stenographers.

There is a general shortage of personnel qualified to handle legal stenographic work in Hawaii affecting both the public and private sectors. This is reflected in the frequent want ads in the newspapers seeking applicants for such positions and in the difficulty DPS has in maintaining and providing the department with a list of eligible candidates.

To deal with this chronic shortage of legal stenographers and the recurring vacancies that plague the legal services program, the department and DPS have resorted to two methods: (1) filling vacancies with temporary emergency hires; and (2) lowering the qualification requirements for placement on the certification lists

for legal stenographic jobs. The first of these has not been a satisfactory solution. Indeed, in the view of some staff members, it has increased the negative effect of turnovers rather than lessened them. At the time of our review, it was still too soon to know what the effects of the second method will be.

The department has made extensive use of emergency hires for its legal stenographic positions. This is reflected in Table 5.4 which shows that 47 out of 85 appointments made since January 1, 1981 (the time when such data began to be collected), or 55 percent, were emergency hire appointments. For one unit in the department, 16 out of 18 appointments, or 89 percent, were emergency hire appointments.

Table 5.4
Number of Emergency Hire Appointments
for Legal Stenographer Positions
January 1981 Through October 1985

Unit	No. of Appointments	Emergency Hire Appointments	
		No.	Percent
Antitrust	2	1	50
HHA	18	16	89
UH	1	0	0
Commerce & Econ Dev	5	1	20
Criminal Justice	2	1	50
Labor	11	6	55
Medicaid Fraud	3	0	0
Steno Pool A	19	12	63
Steno Pool B	9	3	33
Steno Pool C	6	3	50
Tax	9	4	44
COMBINED	85	47	55

Source: Hawaii, Department of the Attorney General,
Administrative Services Office.

Department personnel advised us that such heavy use of emergency hire appointments tends to be disruptive and is an unsatisfactory solution for filling vacant positions. This is true for several reasons. *First*, such persons usually require more initial training and closer supervision because of their lower qualifications. *Second*, most of these appointments do not last for more than two or three months. *Third*, the need for on-the-job training diverts the regular staff from their normal work thereby adding to backlog while the training takes place.

In an effort to overcome the problem of excessive use of emergency hires, DPS in April 1985 amended the minimum qualification requirements for the legal stenographer classes I and II. At the time of our review, the effect of this change had not become evident. Still to be shown is whether or not DPS will be able to maintain a sufficient list of eligible candidates. If not, the department will have to continue to rely upon emergency hires or find some other solution to its chronic shortage of clerical help.

While the department itself is limited by having to work within the framework of the civil service system, some initiatives could be taken. Office automation holds great promise for alleviating the clerical support burden in the legal field. With the installation of an adequate system, the need for clerical positions can be reduced. However, the department is significantly behind its private industry counterparts in making effective utilization of office automation in its operations.

Also, more attention needs to be given to the attracting of qualified legal stenographers. Inadequate salaries may only be part of the problem. Another important factor may be the lack of opportunities for career advancement in this field. If prospective applicants realize this, they may be reluctant to enter the field. In the case of the department, there are only two levels—legal stenographer I

and legal stenographer II. Moreover, there are only three jobs in the second category—the three steno pool supervisory positions. Thus, unless one of these positions becomes open, there is no avenue of advancement for any of the legal stenographic workers.

Civil service requirements restrict the department from creating additional career ladder jobs. However, the department's legal counterparts in the City and County of Honolulu have been able to obtain through basically the same civil service system (the same classification and compensation laws apply to both the state and county civil service systems) a five-level series of legal clerical jobs. Through more strenuous initiative, the department should be able to do the same for the legal services program. Government should also consider following the example of the private sector and provide a means by which clerical workers can move on to become legal assistants (paralegals). With more career opportunities, it will be easier to attract and recruit more qualified personnel to fill these clerical positions.

Classification and Compensation

Although complaints about low pay often mask other reasons for employee dissatisfaction, pay still represents one of the main incentives for attracting and retaining personnel. A properly developed pay structure promotes productivity and organizational stability. To be fully effective, however, it must not be centered just on trying to maintain competitive starting pay. Rather, it should also incorporate a means for encouraging growth, development, and advancement and for rewarding productive and meritorious service. In short, employees should be able to ascend a career ladder through proper application of their talents and efforts. This should be

the goal and product of the personnel management functions of classification and compensation.

In the legal services program, classification and compensation for the legal staff are responsibilities of the department. For the clerical staff, however, DPS and the civil service system dictate these responsibilities.

Classification and compensation for the legal staff. Earlier in this chapter we note that concern about pay was one of the items most frequently mentioned by the deputies interviewed as part of our review. Another concern centered on the long-range prospects for compensation if one stayed with the department. This becomes more understandable since such a large proportion of the legal staff has been with the department for a relatively short period of time (71 percent for five years or less and almost 50 percent for three years or less).

The recent revision of the department's pay plan. Since we conducted our interviews, the Attorney General has installed a new and generally higher salary schedule for the legal staff. This may make present salaries less a matter of deep concern, and it may also relieve somewhat the concerns felt about long-range prospects. Nevertheless, as we view the whole matter of classification and compensation, this latest action still does not come to grips with some of the basic needs of an adequate salary structure.²¹

Based upon the latest salary schedule for the legal staff and the salaries actually being paid to the present staff, it does not appear that the immediate levels

21. A new compensation plan is presently being reviewed by the Department of Personnel Services. This plan is based on merit rather than on years of service as in previous plans.

of pay should present serious problems in terms of being inadequate, except perhaps at the upper levels. This is reflected in Table 5.5 which portrays the previous salary schedule, the latest revised salary schedule, and the actual numbers of deputies falling into each level of the new salary schedule as of November 1985.

Table 5.5
Legal Staff Salary Range Information

Rank or Experience Categories	1984 Schedule	1985 Schedule	No. of Staff in Each 1985 Range Based on Actual Salary as of November 1985*	Percent
Supervisor	\$42,600 - 47,000	\$43,000 - 50,400	10	9
8+ years	40,600 - 45,000	44,000 - 50,400	9	8
6 - 8 years	36,600 - 40,600	38,000 - 44,000	21	19
4 - 6 years	32,600 - 36,500	32,000 - 38,000	26	24
3 - 4 years	29,100 - 32,500	28,000 - 32,000	26	24
2 - 3 years	25,100 - 29,000	26,500 - 28,000	3	3
1 - 2 years	21,100 - 25,000	25,000 - 26,500	6	6
0 - 1 years	21,000	24,000 - 25,400	7	7
TOTAL			108	100

Source: Hawaii, Department of the Attorney General.

*Although the individual attorney's salary falls into a specific range, the attorney may not necessarily meet the experience standards established for the range. The categories assume no experience outside the Department of the Attorney General. Attorneys hired with prior experience have to be evaluated individually, according to their special talents, skills, and experience, and then be placed in a range deemed appropriate by the Attorney General. Apparently, staff members can also be accelerated up the schedule at a rate faster than their actual service time. (A new compensation plan is being reviewed by the Department of Personnel Services.)

As can be seen from Table 5.5, the 1985 revision of the salary schedule was by no means a consistent adjustment. In some instances, minimum and maximum amounts for particular experience levels were actually reduced. However, it does

provide for some fairly significant increases at the top and bottom levels of the salary schedule. More noteworthy is the fact that only about 16 percent of the staff members were being paid at the bottom three levels, which assume three years or less of experience, even though almost half of the present staff have been with the department for three years or less. This indicates that the new hires among the staff include: (1) attorneys with considerable prior experience, (2) attorneys who are able to enter much above the stated entry levels, or (3) attorneys who receive exceptionally rapid advancement in pay after being hired.

Under the prior salary schedule, the median salary of the whole staff was \$32,496 (i.e., half were at this level or higher and half were at this level or lower) while the average salary was \$33,968. Under the revised schedule, the median rose to \$35,004 and the average increased to \$36,071.

Lack of direct comparability with other public legal agency pay plans.

The lack of consistency among public law offices in Hawaii in their approaches to classification and compensation makes it difficult to compare salaries in the department with legal staff salaries in other agencies. In some offices, salaries are set by law or ordinance. In others, guidelines may be established by law, but the agency head is given discretion to determine beginning salaries and to make salary adjustments. As already indicated, actual salaries in the department do not necessarily adhere to the indicated experience levels. Also, some offices have several ranks or series of salary levels based on performance or job duties while others, like the department, have a single set of ranges encompassing all attorneys from the beginner up through supervisor. Further, some legal staff pay scales are tied into the civil service compensation system and collective bargaining

settlements even though these personnel fall into both the exempt and excluded categories.

A review of these various governmental pay plans for legal staff does indicate, however, that some of them do allow for salaries at the upper end which are substantially higher than the top salaries provided under the latest revised pay schedule for the department. The department submitted in April 1986 a proposed new salary schedule consisting of five ranges with a ceiling of \$74,000 and an entry salary of \$29,000. However, as of November 1985, top salaries within the legal services program reach their ceiling at \$50,400 whereas top salaries in the Office of the Prosecutor of the City and County of Honolulu are now over \$60,000.²²

Comparison with pay plans in the private sector. Salaries paid under the department's latest revised pay schedule are also lower than those paid in the private sector—at least among the large law firms—both at the lower and at the upper ends. However, it should be recognized that at the lower end, these law firms are competing for talent from some of the most prestigious law schools in the country. Moreover, pay at the upper end is dependent upon the productivity and

22. The salary of the Prosecuting Attorney and all elected officials of the City and County of Honolulu are established by an independent salary commission created by a 1984 amendment to the City Charter. In setting the prosecutor's salary, the appointed commission considered salaries paid to prosecuting attorneys in mainland cities of comparable size and also salaries of Honolulu attorneys in private practice with comparable education and professional accomplishments. Under an existing ordinance, the Prosecuting Attorney sets the salaries of deputies. The law further provides that the salary of the First Deputy is 5 percent less than the Prosecuting Attorney's and that this differential is maintained between subsequent ranges in descending order. See Section 3-123 of the *Revised Charter of the City and County of Honolulu 1973 (1984 Edition)*; Honolulu Salary Commission of the City and County of Honolulu, *Final Report and Salary Schedule*, Honolulu, 1985, pp. 1, 2, 5, and 7; and Section 6-3.1, *Revised Ordinances of Honolulu 1978 (1985 Edition)*.

profitability of the affected law firms and remains high only so long as it can be justified and sustained by a firm's income.

Another attraction offered by the private sector is that a new hire can usually expect to follow a clear line of advancement if performance is satisfactory. In private law firms, a beginning attorney starts as an associate and can work up an established career ladder to become a partner in the firm. If an attorney does not become a partner within a prescribed length of time, the attorney is then usually encouraged to seek employment elsewhere. Hence, a fairly definite relationship exists between performance on one hand and compensation and continued employment on the other hand.

Lack of career incentives and opportunities. Career incentives are missing under the current pay plan and existing personnel practices for the legal services program. Aside from the Attorney General and the First Deputy Attorney General positions, the only other position which would be a promotion for a deputy is that of a supervising deputy. Although several deputies have been designated as "senior deputies" by their respective supervisors, these positions have not been officially established or recognized by the department. Furthermore, unlike the supervising deputies whose compensation rate is set according to an established salary schedule, the unofficial senior deputies do not all enjoy the same compensation or privileges. As specific criteria to qualify for supervising deputy positions and senior deputy positions do not exist, most deputies do not know if they would ever be eligible for such "promotions." As a consequence, many deputies are not aware of the opportunities for career advancement.

The absence of advancement opportunities is further increased by the department's not recognizing the differences that do exist among the deputies in

terms of their individual levels of expertise, knowledge, experience, and productivity. All members of the legal staff, including supervising deputies, are simply classified as deputy attorneys general. Although all deputies are classified the same, they are not all treated alike in practice. Certain deputies are recognized as having developed special skills or expertise and are assigned the more difficult or complex cases. In some situations, this has meant that capable, newer deputies have had to handle some very complex cases while deputies with more years of service and higher salaries have been carrying easier, more routine cases. The more capable deputies may for a while enjoy the challenges presented by the more difficult cases, but after a time they may begin to realize that they are not being rewarded for meritorious performance and that opportunities for career advancement are limited.

A possible model: the Minnesota Attorney General's pay plan. During the course of our review we had the opportunity to look at a number of compensation plans for public legal services agencies, including some in Hawaii and some in other states. Several of these offered features which, if adopted here, would overcome various problems affecting the department's approach to classification and compensation as discussed above. Representative of these is the Minnesota Attorney General's compensation plan.

The objectives of the Minnesota Attorney General's compensation plan are to ensure reasonably competitive salaries, to promote professional growth and long-term commitment, to provide the kind of flexibility needed to acquire and retain highly qualified personnel, to reward outstanding performance, and to ensure that compensation is internally fair relative to the responsibility and difficulty of assignments. The plan covers three categories of employees: legal assistants and investigators, staff attorneys, and management personnel. For each category, there

are: (1) a salary schedule (including projected inflationary increments); (2) a description of the requirements, qualifications, duties, and responsibilities of each level; and (3) clear statements on the administrative procedures governing appointments, salary adjustments, promotions, and maximums.

For staff attorneys, the plan consists of three levels with a salary range for each level. The ranges between low and high are relatively large as can be seen in the following salary range data for 1985:

<u>Level</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Range</u>
S1	\$23,500	\$36,700	\$13,200
S2	33,600	50,000	16,400
S3	38,300	59,375	21,075

The advantage of the wide range for each level in this plan is the flexibility it allows management in placing attorneys on the proper range and classification scales.

The plan outlines the qualifications, experience, and general duties and responsibilities for each level. For example, staff attorneys at level S2 "deal effectively with difficult legal problems . . . and have performed capably in a previous legal position." Responsibilities may include handling complex litigation and participating in lawsuits of major significance. Procedures governing appointments, advancements, and promotions are intended to be flexible, consistent, and based on merit. For example, adjustments within a salary level result from a semi-annual performance review. Promotions to the next highest level also rest on evaluation of the individual's performance and growth. In addition, employees at the maximum of their salary range may receive a lump sum adjustment of up to 4 percent of their base salary.²³

23. Minnesota, Office of the Attorney General, "Compensation Plan for Unclassified Employees of the Attorney General's Office," St. Paul, no date.

Some of the features of this Minnesota plan can be found in the compensation plans for the legal services staff in the Office of Consumer Protection and the Regulated Industries Complaints Office under the Department of Commerce and Consumer Affairs. However, even these agencies have not taken as comprehensive an approach as has the Minnesota Office of the Attorney General. Nevertheless, they show some recognition of the problems and needs involved in setting the classification and compensation of legal personnel. The legal services program would benefit greatly if the same kind of attention were given to the classification and compensation of its legal personnel as has been given by the Minnesota Office of the Attorney General and by the consumer protection agencies here in Hawaii.

Classification and compensation for the stenographic staff. In our earlier discussion of the recruitment of stenographic staff, we point out that the limited prospects for career advancement inhibits effective recruitment for these positions. With only a two-class employment series, the likelihood of promotion from one of the 30 Stenographer I positions is very slight, because there are only three Stenographer II supervisory positions in the whole legal services program.

To compound this problem, the operation of Hawaii's civil service and collective bargaining systems has prevented long and meritorious service from being rewarded with increased compensation. This resulted from the decision made some years ago to freeze all affected employees in their current salary steps so long as annual salary increases are achieved through collective bargaining. This means that employees who were at the entry level when this freeze went into effect receive the same pay, and no more, than persons who have just been hired—even though the former may have many more years experience on the job. The effects of this situation on the stenographic staff of the legal services program can be seen in

Table 5.6 which shows the monthly salaries of entry level permanent Stenographer I positions as of September 18, 1985.

Table 5.6

Monthly Salaries of Legal Stenographers I
at Entry Level as of September 18, 1985*

Legal Steno	Date Appointed	Monthly Salary
Legal Steno A	01/10/75	\$1,346.00
Legal Steno B	03/27/75	1,397.00
Legal Steno C	06/17/76	1,346.00
Legal Steno D	01/09/78	1,346.00
Legal Steno E	09/25/78	1,346.00
Legal Steno F	10/16/78	1,346.00
Legal Steno G	04/10/80	1,346.00
Legal Steno H	08/01/80	1,346.00
Legal Steno I	08/04/80	1,346.00
Legal Steno J	12/15/80	1,346.00
Legal Steno K	07/01/81	1,397.00
Legal Steno L	03/01/83	1,346.00
Legal Steno M	09/12/83	1,346.00
Legal Steno N	08/01/84	1,346.00

Source: Hawaii, Department of the Attorney General,
Administrative Services Office.

*Includes only permanent Legal Stenographer I
positions.

As can be seen from Table 5.6, the person starting work in August 1984 is making exactly the same pay as the one who started in January 1975, almost ten years earlier. Both legal stenos are making \$16,152 a year. Moreover, a newcomer just starting in a similar position would also make just as much despite the need to learn and become proficient at the intricacies of this particular kind of work. This situation may change in the future, however, as the result of the passage of Act 156 during the 1986 legislative session. Under this legislation, the number of incremental and longevity steps and movement between steps within salary ranges

are now made subjects of negotiation between public employers and the exclusive bargaining agents for public employees.

The department must operate, of course, within the constraints imposed upon it by the civil service and collective bargaining systems. However, even under present constraints, improvements to the classification of legal clerical positions are evidently possible. As noted previously, the City and County of Honolulu has been able to obtain a series of five classifications for its legal stenographic staff instead of the two which the department has. Thus, the series for the two agencies compare as follows:

<u>Department of the Attorney General</u>	<u>Department of the Corporation Counsel</u>
Legal Stenographer I (SR-14)	Assistant Law Stenographer (SR-11)
Legal Stenographer II (SR-16)	Law Stenographer (SR-14)
	Senior Stenographer (SR-16)
	Supervising Law Stenographer (SR-18)
	Supervising Law Stenographer (SR-20)

As can be seen, the City and County series has advantages over the department's series at both the lower and upper ends as far as classification and compensation are concerned. At the lower end, it can bring in less qualified personnel but still offer them advancement if they are able to acquire the needed proficiency through experience. At the upper end, there are two layers of supervisory positions above what is presently the supervisor's level in the department. This means that supervisors in the department are rated at the same level as nonsupervisors in the City and County.

Considering the problems the department is experiencing in recruiting and retaining legal stenographic staff, the department should make every effort to amend the classification and compensation systems.

Working conditions. Working conditions as well as pay can exert a tremendous influence upon staff morale and turnover. These working conditions include adequate support assistance as well as such basics as adequate room size, maintenance, telephone and lighting facilities, and so forth. In the legal services program, however, poor working conditions add to employee dissatisfaction. In our interviews with a broad cross section of the staff, complaints about working conditions were frequently voiced.

The department has not matched its increases in staffing with appropriate increases in space, equipment, and supplies. As a result, many units within the department are very overcrowded, and staff members find themselves seriously hampered by a lack of adequate equipment and basic supplies.

For example, the lack of office space at the State Capitol has deteriorated to the point where several deputies have had to double or even triple up in offices. This is not viewed as being conducive to efficient operations as interruptions are commonplace even when interviews are being conducted, and the office sharers must try to secure other offices when privacy is needed for such activities as taking depositions or planning case strategy.

Another problem is the provision of adequate supplies and equipment. Of the deputies surveyed, many felt that supplies and equipment were inadequate. Some deputies have resorted to buying such office supplies as manila folders, files, and labels as they have not been readily available. Other deputies have brought in their own equipment and furniture, including such items as computers, telephones, file cabinets, typewriters, and shelves while still others are "borrowing" desks, typewriters, and files from other state departments and agencies.

The general feeling, particularly among deputies who are not housed in client agencies, is that they are always having to scurry to obtain supplies which should be basic to every law firm. One deputy is saving spine binders which became available after some files were purged as these items usually require a special order. Dictaphones, which are generally standard issues in law firms, are usually restricted to the Litigation Division staff. One deputy was able to secure one only because it was so old that no one else had wanted it. Many of the deputies interviewed specifically decried the unavailability of file cabinets and pointed out that often important files had to be stored and stacked in boxes. In fact, one supervising deputy remarked that historically, file cabinets have been so difficult to acquire that when he was able to get two filing cabinets, the Attorney General personally saw to their receipt.

Another major source of complaints from the legal staff is the department's antiquated phone system. Since much of the legal staff's time is spent on the telephone, the need for an efficient and effective telephone system is a necessity. However, the department's phone system is outmoded and unable to meet users' needs. At present, one receptionist, at a switchboard which consists of 53 incoming lines on three telephones, juggles 200 incoming calls daily.

The outdated phone system requires the receptionist to perform three separate steps to put each call through. In some instances, it forces her to go to the deputy's room herself to inform the deputy about a call. When she is unaware of the absence of a deputy, it results in her having to watch and count a flashing button to determine if the call should be connected. In addition, the system is such that calls are put through even when the deputies are in meetings or do not want to be

disturbed and has led to the deputies having to disconnect their phones at those times.

The net result is a telephone system which burdens rather than facilitates the transaction of business and which is a source of great frustration for the deputies.

Further adding to the problem of poor working conditions is the lack of adequate clerical support. Based on our interviews and observations, many of the deputies are forced to perform such clerical duties as photocopying or even typing in some cases. An internal survey conducted recently within the Litigation Division indicates its deputies average 1.45 hours per day performing functions which could be assumed by clerical staff if sufficient personnel were available. This not only represents an inefficient use of attorney time, but it also can adversely affect the morale of the legal staff—especially when combined with other factors contributing to poor working conditions.

Training and Career Development

Many law offices in both the private and public sectors view training and continuing education as essential tools for keeping their legal staffs at a proficient level. A legal training program seeks to teach new skills and techniques, imparts knowledge about specialized legal topics, and keeps attorneys abreast of changes in law. Training goals include improving performance, enhancing opportunities for career advancement and professional growth, and strengthening the legal capabilities of an organization.

The department has not established a comprehensive training program for its legal staff. Aside from orientation activities where new deputies meet with supervising deputies to learn about the various divisions, there is no systematic,

departmentwide, in-house training program for new deputies. External training for deputies also occurs in a piecemeal fashion, with some divisions participating more than others.

Training plan. The department lacks a training plan with objectives for both new and experienced staff and guidelines as to what kinds of activities qualify as legal training. Justification of even its modest training budget becomes difficult in the absence of an orderly approach, including a survey of the department's needs and the establishment of training goals based on those needs. Although a survey of training needs was conducted by DPS early in 1984, the needs were too generally framed to be useful. For example, deputies were asked what they liked most and least about their jobs and were requested to rate such general topics as "improving interpersonal relationships" or "resolving interpersonal conflicts." In addition, the training recommendations were not related to legal topics, skills, and concerns. The assessment recommended, for instance, that the staff should "participate in a training program on creative problem solving," and "participate in a program on improving interpersonal communications through the development of better interpersonal skills."²⁴

In-house training program. In his testimony before the 1985 Legislature, the former Attorney General noted that the "[e]ducation and training of lawyers in the office has consisted mostly of on-the-job advice from supervisors and fellow lawyers while handling cases and assignments." He concluded that these efforts

24. Memorandum to Michael A. Lilly, Attorney General, Department of the Attorney General, from James H. Takushi, Director, Department of Personnel Services, Subject: Training Needs Assessment Survey—Office of the Attorney General, July 16, 1984.

were inadequate, especially for new deputies or deputies being shifted to new types of work.²⁵ During the course of our interviews, we also found that the emphasis placed on such informal training varies among supervisors, with some divisions providing closer supervision and more opportunities for informal consultations than others. As a result, many new deputies do not acquire even the most basic trial skills necessary to carrying out their assigned cases.

We surveyed other public sector agencies to learn how they approached the training and education of their staffs. Typically, training is on the job and to a large degree dependent on workload, budget, size of office, and the support of supervising attorneys. However, due primarily to the relatively small size of most offices, there are more opportunities for new attorneys to consult with senior staff, observe courtroom practices, and work closely with their supervisors or senior attorneys. For example, after an orientation which consists of visiting trials, observing senior attorneys, and reading assigned topics, new attorneys in the Office of the Federal Public Defender gradually pick up new cases under the supervision of a senior attorney. After six months, they then start alone on misdemeanor cases. Weekly meetings provide opportunities for consultation and briefing by more experienced staff.

Some offices, on the other hand, do provide more formal training, although their programs vary in scope and formality. The Hawaii County Office of Corporation Counsel recently began a mandatory training program for its legal staff which consists of in-house classes conducted by senior staff. The Legal Aid Society

25. Testimony on the Multi-Year Program and Financial Plan submitted by the Attorney General to the Senate Committee on Judiciary, February 12, 1985.

stresses intensive on-the-job training of new attorneys and close supervision by senior attorneys. In addition, the Society schedules at least one yearly training event for attorneys who may also attend two seminars sponsored by the Hawaii Institute for Continuing Legal Education (HICLE). The Honolulu Office of the Prosecutor has a training program geared toward basic trial advocacy skills for new attorneys assigned to the District Court division. The program has four training areas: on the job, weekly meetings, in-house "mini-sessions," and yearly group seminars.

It is in training of this sort that the department is lacking. Our interviews revealed a belief that the department has persons with both the experience and expertise to conduct in-house, on-the-job training, but that workload and heavy case assignments make this difficult to do at present. An in-house program could be geared to the needs of the agency and avoid dependency on external training course offerings which may not always address the department's specific needs.

External training opportunities. External training activities usually consist of seminars and intensive courses on specialized topics and issues related to the concerns of law offices. Because training designed specifically for an agency is rare, most attorneys rely on short, intensive sessions provided for a fee by various law institutes, universities, and individuals. Several groups, including HICLE and the Pacific Law Institute, offer numerous courses on a wide range of topics of interest to government attorneys. In the last two years, these have included the craft of trial advocacy, workers' compensation law, new rules of the Circuit Court, cross-examination of expert witnesses, trial tactics, and appellate practice.

Spokespersons for both institutes offering courses locally estimated that public sector attorneys accounted for approximately 5 to 10 percent of participants. We

believe this to be low, especially for sessions designed to upgrade the basic skills of attorneys.

Whether or not a deputy participates in professional training is largely dependent upon his or her own initiative and willingness to pay, the value the supervising deputy places on training, and the availability of training funds from the client department or agency. In 1985, the department granted requests for 23 training events for deputies. Of these, 12 were paid for by other departments or federal funds. Of 12 events held on the mainland, 6 were paid by other departments and 1 by the National Association of Attorneys General. Of 11 events held locally, 4 were paid for by grants or by client departments. The range is quite wide, with larger divisions and units, such as the Litigation and Social Services Divisions, tending to participate in training more often than smaller divisions or units.

Of the 13 divisions and units receiving external training support in 1984 and 1985, 8 participated in mainland seminars. Deputies in the Litigation, Regulatory, and Medicaid Fraud Divisions participated in mainland training for both years.

Some deputies have indicated that continuing legal education is low in priority, training priorities do not determine choices of activities, and opportunities for training are not fairly distributed. While some deputies felt that the "best training is to go to trial," the majority spoke of the need for continuing legal education and the opportunity of attending seminars both locally and on the mainland.

Employee Performance Evaluation

Employee performance evaluation can be a valuable management tool. In general, it has been used (1) to assess the actual level of employee performance against predetermined, desired, or essential productivity and performance levels

often for salary adjustment purposes, and (2) to indicate the areas in which the employee is meeting or failing to meet desired levels of performance so that training and related needs can be identified. Although the department does have a performance evaluation system for its legal staff,²⁶ it is not comprehensive or consistently applied.

At present, supervisory deputies use a department form to evaluate deputies. The supervising deputy is directed to list the duties assigned to the deputy, rate the deputy against an established list of criteria, and comment on the deputy's overall abilities. After the form is completed, it is given to the deputy for signature and then submitted to the First Deputy Attorney General and the Attorney General. While the system appears on a cursory level to be quite comprehensive, it has shortcomings.

If employee performance evaluations are to be conducted, the employee should know the purpose of the evaluation, the frequency with which it is to be conducted, who is to conduct the evaluation, the criteria upon which the evaluation is based, what avenues are available for any rebuttal, and how the information is to be used. Our interviews with deputies revealed, however, that not all of the legal staff are fully aware of the department's performance evaluation system. Sixty-two percent of the deputies stated that they were evaluated yearly, 10 percent said that they were evaluated semiannually, and 28 percent gave answers ranging from "not sure" to "every time the Legislature grants a pay raise." When asked to identify the evaluator, 90 percent named their supervising deputy while 10 percent said that they

26. For its civil service staff, the department utilizes the standardized evaluation form used throughout the state government.

were evaluated by senior deputies who functioned as their immediate supervisors. When asked if the results of the evaluation were reviewed with them before being submitted to the Attorney General, 79 percent replied affirmatively, 14 percent responded negatively, and 7 percent were uncertain. In response to a question about the clarity of appeal procedures, 28 percent replied affirmatively, 31 percent responded negatively, and 41 percent were uncertain as to whether any procedures had been established.

Also, if the performance evaluation is to be an effective management tool, the objectives of the performance evaluation must be defined. Currently, the department's primary objective in conducting evaluations is to assist in determining salary adjustments. There is little evidence to indicate that the department has utilized performance evaluations for such other objectives as identifying professional training needs or determining the kind and degree of other informal assistance and guidance to be provided individual deputies to upgrade their skills and competence.

It is also desirable for a comprehensive performance evaluation system to be one where the levels of performance and work expectations toward which each employee may aspire annually are mutually determined by the employer and the employee concerned. However, the department's present performance evaluation system does not routinely allow for the establishment of mutually determined goals.

Under current practices, the department has not been able to realize the benefits which a more carefully designed performance evaluation system could produce. To develop a better system, several weaknesses under the current system would need to be addressed:

- . The criteria used to evaluate employees would need to be defined more precisely. In our survey of deputies as to whether they felt that the evaluation criteria were clearly defined, 52 percent responded negatively or said that they were uncertain.²⁷
- . There is a need to clarify the rating scale which is used. The evaluator rates a deputy's performance in one of three categories: high, mid, or low. The categories are further subdivided into: high (A, B, and C); mid (D); and low (F). Essentially, the deputy receives a "letter grade" for each criterion on the rating form, with "A" being the highest rating and "F" the lowest. However, no definition or clarification is available for each of the letter ratings. Since, for example, there is no guidance as to what distinguishes an "A" rating from a "B" rating, heavy judgment is required on the part of the evaluator.
- . If a performance evaluation is to be of any value to the employee and management, there needs to be discussion between the evaluator and management as well as among management. Not only should the evaluator give feedback to the person evaluated but top management should also review the performance evaluations with the supervising deputies. Our review indicates that not all deputies who are evaluated have the opportunity to discuss their evaluations, and top management does not routinely participate in the evaluation process.

27. The use of "experience" as an evaluation criterion is an example of the lack of preciseness. The department relates experience to the following questions: "Does the deputy's performance of his duties reflect self-assurance, confidence and pride resulting from familiarity with the knowledge acquired? Does his application of his knowledge reflect ease and comfort that comes with repetition and practice?" Under this guidance, it is not clear how "experience" would differ from other criteria used, such as "skill," "knowledge," and "accuracy."

- . Supervising deputies are not evaluated as part of the formal evaluation system although there is just as much a need for the department to determine the strengths and weaknesses of its supervisory personnel.

The department needs to give attention to the foregoing areas and consider performance evaluation in a larger context than the mechanism merely for determining salary adjustments. Performance evaluation could then be applied and utilized more fully as a management tool, and it would be more meaningful and helpful than its current limited and perfunctory use.

Recommendations

With respect to personnel management for the legal services program we recommend as follows:

1. *The Department of the Attorney General should determine the extent to which it wants a career oriented staff for the legal services program. Then, on the basis of this determination, it should develop a top level capability to oversee and carry out the decided upon level of human resources management.*

2. *The Department of the Attorney General should seek out the causes of the high turnover rates among its legal and clerical personnel and then determine the best solutions to the problems identified.*

3. *With respect to specific aspects of its personnel management policies and practices, the Department of the Attorney General should:*

a. *Develop and implement a more open, fair, and consistent system for recruiting legal staff.*

b. *Avoid to the extent possible the utilization of emergency hires to fill clerical support positions but instead work with the Department of Personnel*

Services in making these jobs more attractive through enhanced opportunities for career advancement.

c. Develop and implement a comprehensive system of classification and compensation for the legal staff which is fair and consistent in its application and which provides ample opportunity and incentive for career growth and advancement. The pay plan of the Minnesota Office of the Attorney General is one among several models which the Department of the Attorney General may wish to consider.

d. Work with the Department of Personnel Services to replace the present two-level series of legal stenographer classes with a broader series of classes in the legal clerical support area, such as the present five-level series now available to legal agencies in the City and County of Honolulu.

e. Initiate an overall and thorough review of working conditions throughout the legal services program aimed at defining minimum acceptable levels and bringing conditions up to meet these levels. Particular emphasis should be given to relieving the problems of overcrowding; an archaic, inadequate telephone system; and inadequate equipment, supplies, and clerical support services.

f. Develop and implement a systematic and comprehensive approach to training and career development which meets the needs of the staff and which maximizes the use of available resources.

g. Revamp its current approach to performance evaluation and replace it with a system which is comprehensive, consistent, and meaningful in terms of evaluating relevant indicators of performance, rewarding performance where this is deserved, and initiating corrective actions where performance is deemed inadequate.

Chapter 6

LITIGATION MANAGEMENT

The costs and administration of litigation are areas over which the Legislature has expressed specific interest and concern. Litigation costs in FY 1985–86 account for approximately \$2.3 million, or more than one-fourth of the legal services budget of the Department of the Attorney General. In addition, more than \$5.6 million in general funds were appropriated by the Legislature in 1986 to cover adverse judgments and out-of-court settlements arising from claims against the State. In this chapter, we examine selected aspects of the department's operations with respect to its litigation responsibilities.

Summary of Findings

1. While the department has adopted new policies for its litigation activities, operating policies in certain areas remain incomplete, and existing policies are not always adequately implemented.

2. The administration of personal service contracts relating to litigation needs improvements in such areas as: (a) contract files recordkeeping; and (b) formal policies and procedures for the selection and hiring of outside counsel and other specialists, including the contracting of services with former employees.

Some Background

Litigation represents a major and growing expenditure area for the legal services program. Litigation expenses fall into two main categories: (1) those

arising from the actual process of litigating cases through the courts (attorneys' fees, court costs, etc.); and (2) those resulting from adverse judgments or out-of-court settlements where payments have to be made to opposing parties in the litigation. The latter may be offset to the extent the State may win cases and receive payments from the opposing parties.

Only the first category of expenditures is reflected in the budget for the legal services program. Even here the picture of expenditures is not complete. What is referred to as the "litigation fund" does not encompass all of the affected litigation costs. It does not include litigation costs chargeable to nongeneral fund sources, such as activities financed through special and federal funds; the salaries of personnel on the regular staff of the department who happen to be involved in the handling of litigation; expenses related to the prosecution or defense for hearings before administrative boards or commissions;¹ or expenses arising out of eminent domain proceedings.²

The litigation fund itself is a recent innovation; it came into existence only in FY 1984-85. Previously, general fund litigation expenses (other than the department's regular payroll expenses for its own personnel involved in litigation matters) were paid for in two ways: (1) through the department's budget under the category of "services on a fee basis," and (2) through the budgets of other departments requiring litigation services. There was no clear policy, however, concerning how litigation costs should be divided between the two sources of funding.

1. Hawaii, Department of the Attorney General, "Administrative Policies Regarding Accountability for Litigation Expenses and the Hire of Special Deputies," Honolulu, July 1, 1985, p. 1.

2. *Ibid.*

As the number of cases against the State and the resultant costs of litigation began to mount in the early 1980s, the Legislature became concerned over: (1) the difficulties it experienced in obtaining a clear overall picture of what was happening in the area of litigation, and (2) the seeming lack of effective direction and control over the utilization of state resources being devoted to litigation activities.

As a result of its concern, the Legislature included provisions in the Supplemental Appropriations Act of 1984 (Act 285) which centralized general fund expenditures for litigation purposes in the department and called upon the Attorney General to establish policies and procedures for the expenditure and accountability of funds used for litigation activities. The act appropriated \$986,110 for litigation purposes for FY 1984-85. It further required that an accountability report on litigation expenses and the hire of special deputies be submitted to the Legislature.

In 1985, the Legislature appropriated \$1,121,727 for general fund litigation expenses for FY 1985-86 under the General Appropriations Act of 1985 (Act 300) but omitted any appropriation for this purpose for the second year (FY 1986-87) of the biennium. Instead, it included many of the provisions set forth in the previous appropriation for FY 1984-85 placing requirements and restrictions on the use of litigation funds. Among these requirements was one for the Attorney General to continue submitting quarterly accountability reports to the Legislature. The provisions then state that "if such reports exhibit sound planning, control, and accountability based on administrative policies established by the attorney general, the Legislature shall appropriate a justifiable amount to the department of the attorney general [for FY 1986-87] exclusively for litigation expenses and the hire of

special deputies." The 1986 Legislature appropriated \$1,700,000 for litigation expenses and the hire of special deputies.³

New recordkeeping. Since the second half of FY 1984–85, the department has used a litigation tracking system to report on general fund and nongeneral fund litigation expenses through a customized computer program. The department has provided quarterly reports as mandated by the Legislature that distinguish litigation expenses by types, cases, and divisions. The reports include total expenses which are categorized by an object spending code for each expense category by case. This information was used for budgeting purposes for the FY 1986–87 supplemental budget and for monitoring litigation expenses.

Prior to FY 1984–85, the department recorded expenses manually but did not keep accurate and detailed information on litigation expenses. Due to the legislative mandate in 1984 and the department's new case tracking system, the reporting of general fund and nongeneral fund litigation expenses now includes more detailed information than in previous fiscal years. As a result, litigation expenses are categorized into more discrete object spending codes, and the department has started to keep an expense report for the nongeneral fund programs.

Administrative policies. Also in response to the legislative directives included in the appropriations for the litigation fund, the department has developed and issued a document entitled: *Administrative Policies Regarding Accountability for Litigation Expenses and the Hire of Special Deputies*. This was first issued

3. Act 345, SLH 1986. The Legislature also appropriated an additional \$500,000 for the FY 1985–86 litigation fund raising the new total for FY 1985–86 to \$1,621,727.

on October 10, 1984, and a revised version was issued on July 22, 1985. The current version is subdivided into four parts. The first part defines generally what is included and excluded from the meaning of "litigation expenses" and urges staff members of the department to make every reasonable effort to minimize litigation costs.

The second part of the policy document sets forth in some detail specific policies and procedures governing expenses relating to travel, taking depositions, hiring consultants and experts, securing court reporting services, and long distance telephone calls. Part three of the document contains detailed provisions relating to the hiring of special deputies. Finally, part four identifies in-house procedures to be followed for payment of litigation expenses and the costs of special deputies. Generally, the procedures call for processing payments through the department's Administrative Services Office (ASO) and for obtaining approval from nongeneral fund users for the services charged to them.

Management of Litigation Activities

Under legislative impetus, considerable improvement has been made in areas affecting the financial management and control of litigation activities. As already noted, a new recordkeeping system has been inaugurated and administrative policies have been developed and issued prescribing limits on and controls over the use of resources for litigation purposes. These actions represent steps in the right direction. However, they do not provide a complete answer to the need for increased effectiveness in this area. Shortcomings still exist which need to be overcome.

Operating policies. The revised administrative policies concerning litigation expenditures issued by the Attorney General on July 22, 1985, provide needed guidance in many areas affecting the way litigation matters are to be handled. If carefully observed, they should eliminate some past problems which came to light during the course of our review. However, more complete and adequate policies are still needed for some areas.

System for tracking the financial responsibility for cases. The administrative guidelines are too general to assure financial accountability for particular cases. No system is set up for identifying specific cases, for making sure all files pertaining to each case are accounted for and kept together, for relating all pertinent documents (contracts, requests for payment, etc.) to each case, and for obtaining proper approval from program personnel for all expenditures made. When a deputy is assigned a case, it should be made very clear what responsibilities the deputy has vis-a-vis the Administrative Services Office in keeping track of the case and accounting for expenditures arising from it. This is not possible under the existing situation. We discovered that trying to determine the status of a particular case and to fix all the costs relating to it can be quite difficult.

Budget planning and control. Closely allied with the above listed shortcoming is the lack of operating policies which link the new information system with budget planning and control. With more data available, it should be possible to review all cases on a regular basis to determine their status and likely near-term and long-term prospects—particularly in terms of financial implications. Budget projections would then have a firmer basis than they do now. At present, budget estimates are roughly straight line overall projections based upon the most recent experience. Although affected divisional supervisors have recently been asked to

provide input into the estimation process, their comments do not generally represent a careful analysis of all pending cases for which they are responsible. What is needed is for the department to make the new system an integral part of budget planning and implementation.

Implementation of new recordkeeping system. While new administrative policies have been articulated, they are not always adequately implemented, as we noted in the case of the processing of bills for litigation expenditures chargeable to nongeneral fund sources. Under the department's policy, all requests for payments out of nongeneral fund sources are to be routed through ASO which will preaudit them before forwarding them to the affected nongeneral fund program for payment.

However, due to inadequate staffing, the department has relinquished its preauditing responsibilities for nongeneral fund expenses to the funding departments and agencies. For example, the Department of Transportation (DOT) preaudits its own billings against its several special funds because ASO lacks adequate staff to preaudit the bills. Despite DOT's willingness to preaudit the billings prior to payment, the billings are not sent to DOT on a timely basis by the department. As a result, DOT is penalized with delinquent interest payments.

DOT has assigned an equivalent of one and a half account clerks working on a full-time basis to review and audit litigation billing requests. Even with this clerical support, DOT finds that it is paying 12 percent simple interest penalties because bills cannot be processed and paid within the 45-day limitation after receipt of the bill.

Administration of personal services contracts. Personal services—especially the services of private attorneys—constitute a major portion of the litigation expenditures incurred each year by the department. This makes the administration

of personal service contracts an important area of administrative responsibility for the department.

As previously noted, the department has recently adopted administrative policies regarding accountability for litigation expenses and the hire of special deputies. These policies were developed to curtail spiraling litigation costs and to provide guidelines on the hiring of special deputies for the department and other state departments and agencies.

The Attorney General has the authority to retain special deputies or outside counsel, with the approval of the Governor, for any case deemed necessary. Outside counsel include the hiring of special deputies, consultants, lead counsels, and expert witnesses. According to administrative policies, outside counsel should be used only if the individual has special expertise which the department cannot obtain or develop or if the outside counsel services will result in a cost savings to the department. In all cases, ASO is responsible for the monitoring and controlling of all such contracts.

Contract files. With regard to recordkeeping for the contracts, we found the following: (1) the files are not indexed by case or by the fiscal year of contract approval; (2) the contracts are filed only in alphabetical order by the last name of the individual contractors; (3) the files are not indexed by contract categories such as for special deputies, consultants, counsels, contractors, and appraisers; and (4) the files contain contracts for special deputies who appear to have completed their contract obligations.

Maintenance of the contract files requires the cooperation of the deputy in charge of the case, the deputy's supervisor, and the ASO staff in preauditing and monitoring expenses and in keeping track of the status of the legal proceedings.

Without such cooperation, problems in maintaining the files occur when the deputy or the supervisor follow only the legal proceedings of the outside counsel's cases and neglect to monitor the contractor's expenses. ASO, by policy, is responsible for monitoring and auditing the contracts, but the office is usually unaware of the current legal standing of cases unless it is so informed by the affected deputy.

At the present time, the coordination among the parties is very loose and often nonexistent. As a result, many contracts that are either completed or should be closed are left in the active files because no action is initiated by the affected deputies to close the files.⁴ ASO, which has the fiscal responsibility for contract administration, has not initiated any organized review of the files for many years due in part to inadequate staffing.

Guidelines for contracting. No guidelines are established for determining when outside assistance may be required or whether or not particular individuals possess the qualifications needed. Although a variety of specialists may be hired under contract, it is only with respect to attorneys that any reference to need or qualification is made in the administrative policies. For special deputies, the policy states they should be hired only if "(1) said individual has special expertise which the Attorney General cannot obtain or develop, in a timely and economical manner, from within the department; or (2) the services of a special deputy will result in a cost savings to the Department."

4. The present Litigation Division supervisor is developing policies and procedures to improve communication among the parties and to provide timely information to the Administrative Services Office and the client departments and agencies with nongeneral fund litigation cases.

However, the department has no guidelines or formula by which it is possible to determine whether cost savings might be achieved by going outside of the department for legal help. Similarly, there is no standard process whereby the department's in-house capabilities can be assessed relative to particular needs as they arise. Thus, there is no way of knowing whether the options of staying in-house or going outside are carefully weighed before decisions are made to contract for outside services.

Furthermore, the contract procedure and the contracts themselves do not provide any clear basis for knowing just what kind of specialized services is being contracted for. Since the department employs many types of specialists, it should be possible from the available documentation to know in each case the particular specialty or expertise that is being acquired. At present, however, this is not possible.

Many of the contract justifications are broadly stated as "special knowledge and competence" or "well-qualified and experienced." No references to specific knowledge or qualifications of the individual are made in the contracts.

Reliance on former deputies. In the past five years, at least 18 special deputy contracts have been awarded to 10 former deputies to provide legal services in 23 cases. Seven of these contracts are open-ended; there are no limitations on the amount that can be paid to the special deputy in a given year or for the contract duration.

It has generally been the practice of the department to assign only one deputy to each litigation case. As a result of this practice, the department was left in a vulnerable position whenever a deputy departed to work elsewhere, especially if this

occurs before a case goes to trial. This practice has contributed to the department's heavy reliance on former deputies.

In this regard, we found that the department is now attempting to complete cases left by former deputies by assigning them in-house. The Litigation Division supervisor has also been assigning a lead attorney and a second chair to each case to avoid having only one deputy assigned to each case as has been the practice in the past. It is still too soon to know what effects these changes will have on the hiring of former deputies and on cost savings to the department.

Hawaii's conflict of interest statutes apparently leave the Attorney General with discretionary authority to contract for the services of former employees. Thus, while Section 84-15(b) and Section 84-18(b), Hawaii Revised Statutes, would seem to raise barriers against this practice, Section 84-18(d) provides for an exception in such instances. It states as follows:

"This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent such legislator or employee from appearing before any agency in relation to such employment."

The intent of this provision clearly allows an agency to continue the services of a former employee on a project that could not be effectively carried on by a replacement—at least not immediately. Nevertheless, it is quite understandably a sensitive issue, and the State Ethics Commission has issued an opinion on the matter. In its Opinion No. 400, dated January 2, 1980, it ruled as follows:

"HRS 84-18(d) would be interpreted to exempt contracts for personal services between state agencies and former state employees from the restrictions of HRS 84-15(b) and HRS 84-18(b) so long as there was no evidence that the employee and the agency had colluded to provide an unwarranted benefit to the former employee or other persons."

Consequently, the Attorney General has the legal authority to grant contracts to former deputies. However, this authority should be exercised with considerable care and discretion—particularly in light of the State Ethics Commission's caution against allowing collusion to occur between an agency and an employee to provide an unwarranted benefit to the former employee.

This reinforces the need for the department to have a clear and firm basis for determining when it should go outside the ranks of its own deputies to contract for legal services. It also indicates that when a former deputy is given a contract, there should be a definite and supportable finding that such action is in the best interests of the State (e.g., comparable expertise is not otherwise readily available or such action will result in a demonstrable cost saving to the State).

Recommendations

With respect to the selected areas of litigation management which have been reviewed, we make the following recommendations:

- 1. The Department of the Attorney General should revise and expand its policies and procedures governing litigation expenditures so as to make them as comprehensive and effective as possible, with particular attention to such areas as budget planning and control, and expenditure monitoring and control. Such policies and procedures should encompass nongeneral fund as well as general fund activities.*

- 2. The Department of the Attorney General should tighten up its administrative operations relating to the management of personal services contracts. More specifically, it should:*

- a. Reorganize its contract files so that all records, data, and files relating to a single case can be readily accessed, so that individual cases can be regularly*

reviewed and the status of each ascertained, and so that overall summary information can be collected and reported.

b. Develop and utilize more specific guidelines and criteria for determining the need for outside assistance and expertise and for selecting those to do contract work.

c. Scrutinize all proposed contracts to former employees and install appropriate safeguards and require documentation to ensure that all such contracts awarded are in the best interests of the State.

APPENDIX
RESPONSE OF THE AFFECTED AGENCY

COMMENTS ON AGENCY RESPONSE

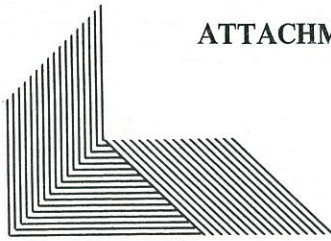
On October 31, 1986, copies of a preliminary draft of this study report were transmitted to the Governor, the presiding officers of the two houses of the Legislature, and the Attorney General. As is our practice, we requested the Attorney General, as head of the affected agency and program, to provide us with her comments on the recommendations contained in the audit report.

A copy of the transmittal letter to the Attorney General is included herewith as Attachment 1. The Attorney General submitted a response dated November 24, 1986. This response is included here as Attachment 2.

We are pleased to note that the Attorney General finds the report to be excellent, its preparation to have been thorough and sensitive, its identification of problems to be clear, and its recommendations to be constructive. We share the Attorney General's hope that it can be used to bring about improvements in the operations of the legal services program.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA
AUDITOR

October 31, 1986

COPY

The Honorable Corinne K. A. Watanabe
Attorney General of the State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Madam Attorney General:

Enclosed are three copies, Nos. 4-6, of our preliminary report on the *Study of the Legal Services Program of the Department of the Attorney General*. The report was prepared pursuant to a request made by the Legislature in the conference committee report to the General Appropriations Act of 1985.

We invite you to comment on the recommendations made in the report. While we realize that your current term as Attorney General will end shortly, we believe that the next administration as well as the Legislature can benefit from your views on the various recommendations. If you decide to submit comments, we ask that you do so by November 21, 1986, so that they can be included in the final report.

Since the report is not in final form and there could be changes to the report, access to it should be restricted to those persons whom you might wish to call upon to assist you in reviewing the report. The only other parties who have been provided with copies of the preliminary report are the Governor and the presiding officers of the Legislature. Public release of the report will be made solely by our office and only after the report is published in its final form and submitted to the Legislature.

We appreciate the assistance and cooperation extended to us during the course of the study.

Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2

GEORGE R. ARIYOSHI
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
HONOLULU, HAWAII 96813
(808) 548-4740

CORINNE K.A. WATANABE
ATTORNEY GENERAL

RUTH I. TSUJIMURA
FIRST DEPUTY ATTORNEY GENERAL

November 24, 1986

Mr. Clinton T. Tanimura
Legislative Auditor
The Office of the Auditor
State of Hawaii
465 South King Street, Room 500
Honolulu, Hawaii 96813

RECEIVED

Nov 24 10 16 AM '86

OFF. OF THE AUDITOR
STATE OF HAWAII

Dear Mr. Tanimura:

Thank you for the opportunity to review and to submit our comments on the preliminary report on the Study of the Legal Services Program of the Department of the Attorney General, which we received with your transmittal letter dated October 31, 1986.

In general, I believe that the report is excellent, and your staff is to be commended for their thoroughness and sensitivity in preparing it. The report identifies very clearly many problems which my department has been wrestling with and it offers constructive recommendations which my department would love to implement. Since many of the recommendations will require money to implement, it is my sincere hope that, armed with your report, my department will be able to get some legislative assistance and appropriations to improve the operations of the legal services program. I am sure the report will be especially useful to the incoming Attorney General. On behalf of the Department of the Attorney General, thank you.

Very truly yours,

Corinne K.A. Watanabe

Corinne K. A. Watanabe
Attorney General