

**WAYS AND MEANS COMMITTEE
OF THE
SUFFOLK COUNTY LEGISLATURE**

VERBATIM TRANSCRIPT

A regular meeting of the Ways and Means Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on Wednesday, February 1, 2012 at 10:00 a.m.

MEMBERS PRESENT:

Legislator Ricardo Montano, Chairman
Legislator Steve Stern, Vice-Chair
Legislator Robert Calarco
Legislator Lynne Nowick
Legislator John Kennedy

ALSO IN ATTENDANCE:

George Nolan, Counsel to the Legislature
Tim Laube, Clerk, Suffolk County Legislature
Renee Ortiz, Chief Deputy Clerk, Suffolk County Legislature
Benny Pernice, Budget Review Office
Gail Lolis, County Attorney's Office
Pam Greene, Director of Real Estate
Eric Kopp, County Executive's Office
Ben Zwirn, County Executive's Office
Bob Martinez, Aide to Legislator Montano
Debbie Harris, Aide to Legislator Stern
Dennis Cohen, County Attorney Appointee
Dot Kerrigan, 3rd AME
Arthur Sanchez, DSPBA
Other Interested Parties

MINUTES TAKEN BY:

Donna Catalano, Court Stenographer

MINUTES TRANSCRIBED BY:

Kim Castiglione, Legislative Secretary

(THE MEETING WAS CALLED TO ORDER AT 10:02 A.M.)

CHAIRMAN MONTANO:

I will call the Ways and Means Committee meeting to order. We will start with the Pledge of Allegiance led by Legislator Stern.

SALUTATION

Okay. I guess this is our first meeting of the year. Happy New Year, everyone. Do we have any cards? No cards. Welcome, Rob. No correspondence. No presentation. No tabled resolutions. I'm going to start with Introductory Resolutions.

Introductory Resolutions

IR 1002-2012, Authorizing technical correction to Resolution No. 862-2011, instituting a lag payroll in Fiscal Year 2012 for employees in Bargaining Units 21 and 30. (Pres. Off.)

I believe these are just technical language changes, Counsel?

MR. NOLAN:

Yes. These were -- the next three were requested by the Comptroller's Office. They want to institute the lag payroll over 20 pay periods rather than the 26 in the original resolution. So that's -- that's all these resolutions do.

CHAIRMAN MONTANO:

Okay. I will make a motion to approve.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Second by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1 Not Present: Legislator Kennedy)**

IR 1003-2012, Authorizing technical correction to Resolution No. 863-2011, instituting a lag payroll in Fiscal Year 2012 for employees within Suffolk County Board of Elections in Bargaining Units 21 and 24. (Pres. Off.)

We are going to pass over this. We may have -- we will look at the issue of whether or not Legislator Nowick and myself can vote on this.

IR 1004-2012, Authorizing technical correction to Resolution No. 864-2011, instituting a lag payroll in Fiscal Year 2012 for Elected Officials. (Pres. Off.)

We don't have a problem with that. Go ahead, Lynne.

LEG. NOWICK:

Just what are the technical corrections?

MR. NOLAN:

What these resolutions do is the Comptroller's Office requested that they wanted to institute the lag payroll over 20 pay periods as opposed to the 26 pay periods. That's all it does.

LEG. NOWICK:

That was my question. I was wondering if it was for everybody. So that it stops after a certain time because they've already started the lag payroll.

MR. NOLAN:

They've started it. I think for administrative purposes it was just easier to do it over 20 pay periods.

LEG. NOWICK:

Okay. So the numbers will change next time and the last six pay periods will be --

MR. NOLAN:

They'll be normal, yeah.

CHAIRMAN MONTANO:

Okay. Any other questions? I'll make a motion to approve.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Second by Legislator Stern. All in favor? Opposed? Abstention? Motion carries. ***(Vote: 4-0-0-1 Not Present: Legislator Kennedy)***

Mr. Cohen, I'm simply waiting for Legislator Kennedy to show up, and as soon as he does we're going to go out of order. Is that Gail walking in? Why don't we -- I'll make a motion to go into Executive Session to discuss a case, and this way when we return hopefully Legislator Kennedy will be here. Is that all right with everybody? Need a second.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Second by Legislator Stern. All in favor? Let's go in Executive Session.

(Executive Session was held from 10:06 to 10:14 a.m.)

CHAIRMAN MONTANO:

Okay. We just completed the Executive session. We're going to -- well, yeah, there wasn't a settlement. It was more a discussion of an existing case, so there's no need to, I think, put anything on the record. We passed 1004.

At this point I'm going to move the agenda up or change it, and I'm going to move to -- with everyone's permission, I'm going to take 1052 out of order. And that is ***IR 1052-2001, Confirming appointment of County Attorney of Suffolk County. (Co. Exec.)***

Mr. Cohen, could you come forward? Okay. I need a vote to take 1052 out of order. I will make the motion, I need a second.

LEG. KENNEDY:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Kennedy. All in favor? Opposed? Abstentions? *(Vote: 5-0-0-0)*. 1052 is taken out of order, it is before us. Before we make a motion I'd like to have our proposed County Attorney, Mr. Dennis Cohen, I guess make a statement to the committee, present yourself. Just for the record, Legislator Stern and myself had a conversation with Mr. Cohen over some of the recent issues involving the Law Department. And now we're on the record, so go ahead, Dennis. Welcome and congratulations on your appointment, and we'll take it from here.

MR. COHEN:

Thank you. Just briefly, I want to thank the committee for having me here. I'll be happy to answer any questions. Basically, out of law school I worked for the Town of Babylon. I became Town Attorney in 2004. I was Town Attorney for four years, at which point I was elected to the District Court and was a District Court Judge for four years. Just recently I was asked to become the County Attorney, which I accepted, which brings me here. I'm very excited for the opportunity. And, again, I'll answer any questions that you may have.

CHAIRMAN MONTANO:

Okay. Anyone have any questions? Go ahead, Lynne.

LEG. NOWICK:

Hi. Welcome.

MR. COHEN:

Thank you.

LEG. NOWICK:

Just because I've been hearing a lot about the people that have been let go in the County Attorney's Office, is that something -- maybe you can't answer this. Are you already in there? I mean, is that something that was your decision or was that a joint decision?

MR. COHEN:

I am there. With the County Executive's Office I was asked to look at the department and to see if I could -- I guess see, you know, if I can live without a certain amount of attorneys. After doing the evaluation, I did concur that letting these attorneys go, that the department would still function as is; we'd still be an effective department. So, yeah, I was definitely part of that decision.

LEG. NOWICK:

I understood and, you know, everything -- of course, you hear things, you don't know if it's true or not true, so just bear with me. And I'm not attacking you, I just wanted the answers. I understand the 14 attorneys -- is it 14, 12, 16? I hear --

MR. COHEN:

It was 13, which includes two part-timers.

LEG. NOWICK:

I don't have that number right, do I? Thirteen?

MR. COHEN:

Thirteen.

LEG. NOWICK:

Thirteen attorneys. So what I was understanding is that when they were let go it's not because they were not performing their duties, but it was because of the economy and because of the

budget. So my question is does that mean that none of these positions will be refilled?

MR. COHEN:

Out of the 13, one is going to be refilled.

LEG. NOWICK:

And the other 12 are just going to be -- now, are you able to -- you are able to function without these positions with backlog and caseload?

MR. COHEN:

Yes. It's my view that, one, the attorneys who are there will certainly have to work harder. I always expect the work to be done. As a District Court Judge, I always expected the attorneys who appeared before me to be prepared and ready to go. I have that same expectations for my attorneys.

The second part of that is I think through training the attorneys to do work in all bureaus that where a need arises in a certain bureau that may be shorthanded or may have lost some people, I can fill in with other attorneys, if they're trained properly and given an opportunity to do that.

LEG. NOWICK:

So we're able to take an attorney say that works in Family Court and move him around to another court?

MR. COHEN:

Yes.

LEG. NOWICK:

They're all cross-trained?

MR. COHEN:

They will be.

LEG. NOWICK:

They will be.

MR. COHEN:

Yes.

LEG. NOWICK:

Okay. And that was mainly the question; those positions, are they going to be refilled, but you're saying no.

MR. COHEN:

They won't be refilled in the Attorney's Office.

LEG. NOWICK:

What does that mean?

MR. COHEN:

There's another part of that, that the County Executive is looking to create a Department of Economic Development, which, you know, I'm probably not the best person to speak about that. But they won't be replaced in the County Attorney's Office.

LEG. NOWICK:

Maybe Ben can answer the question. If they're title is "attorney," that title would move over to Economic Development?

MR. ZWIRN:

These titles in the County Attorney's Office will be eliminated, and we will be bringing over legislation in the form of a Certificate of Necessity with a budget amendment with the creation of an Economic Development Department, and taking the revenue that we would have -- the expense that we would have in the County Attorney's Office and fill positions there. So this money that we're saving in the County Attorney's Office is just going to be moved to another department that the County Executive is looking to set up with your approval.

LEG. NOWICK:

Okay.

MR. ZWIRN:

He needs the money because we just can't set up an Economic Development Department with no revenue. We needed an offset. So as the County Executive's staff looked around to see where that could be done, they thought that they could -- the County Attorney's Office could have less positions and still cover their mission, and that money that was freed up could be used to set up Economic Development, which the County Executive thinks is critically important, especially in these times.

LEG. NOWICK:

And I do agree, economic development is important. I just misunderstood. I thought that the 13 jobs were to save money. So that's not going to affect -- the money is going to be spent anyway, it's just that one group of people are going to be out of a job, and then we're going to have another group of people that are going to come in and maybe run Economic Development; is that it?

MR. ZWIRN:

Yes, that's correct.

LEG. NOWICK:

Thanks, Ben.

CHAIRMAN MONTANO:

Legislator Stern.

LEG. STERN:

Thank you, Mr. Chair. Welcome.

MR. COHEN:

Thank you.

LEG. STERN:

Congratulations on your appointment.

MR. COHEN:

Thank you.

LEG. STERN:

A couple of questions. Maybe you can go through what your vision is and take a little more time to develop what your philosophy might be. You're going to be down a dozen attorneys. I know that, in our discussions, your vision is that, look, there doesn't necessarily need to be attorneys that are

pigeon-holed in a particular area of practice, because the number of cases goes up, it goes down, and you want to operate the office much more efficiently. So a litigator is a litigator and should be spread out over the course of what's necessary in the office. Maybe you can speak to that and assure this committee that even with fewer lawyers, the caseload can be handled, particularly those that involve litigation.

MR. COHEN:

Again, I'm a big believer in that not only is a litigator a litigator, but an attorney should and can learn new areas of law. You know, I can give you my personal example. When I was running for District Court and I had to get through the Suffolk County Bar Association, they had concerns about me that, one, I never practiced criminal law, and two, I wasn't a trial attorney. And I remember saying to them, "My attitude is I went to law school, I learned how to be a lawyer, and my feeling is I can learn anything." And that's what I expect of my lawyers. There's no reason to be pigeon-holed into a certain area of law. So what I expect of them is to take the opportunity when we do the cross-training to learn how to do it.

And to me, there's no reason why if Real Estate is slow, you know, in this times if we're going to be buying less land, why the Real Estate Bureau should be slow and have those attorneys -- I don't want to say sitting around doing nothing -- but, you know, able to spread out the work a little more. There's no reason why I can't train one of those attorneys to go to Family Court to fill in or to go out to a personal injury case and conduct a conference. You know, those things can very easily be trained.

Regardless of whether these positions were going to be let go, that was my plan coming in, because that's what I believe in. When I was the Town Attorney, I also did that. I didn't want one attorney just doing one thing. You know, we had zoning attorneys who would go to the ZBA and they were pigeon-holed into that zoning world. One of things I instituted when I was there was, "Listen, you have to learn other areas. I may need you to cover personal injury cases. I may need you to go to District Court and prosecute the town ordinance cases." And fundamentally I do believe that. So, you know, I planned on implementing that any way.

The other part of it, you know, not that we have discussed it much, one of the things I've noticed is that the office is very formal in certain opinions that it gives. I was talking to an attorney just the other day, I asked her to research something for me. So we talked about it and she gave me her position and she said, "Well, now I'm going to draft a memo for you." I said, "I don't want a memo. We just went through it. I understand the issue. You gave me the backup." And just little things like that I think that save time, because I've seen the memos that are generated, which I know take a lot of time. Unless they're necessary, why do it? I don't want to do things just because it was done in the past or just because it's formal. You know, I think those are things that I plan on instituting over whatever term I have there.

LEG. STERN:

Would you be able to speak to the nature of the work that is currently being performed by those attorneys that are now going to be eliminated; what kind of work are they doing? What departments are they currently working in? What -- and maybe you can speak to some of the manpower that remains that would be able to cover that subject matter.

MR. COHEN:

Sure. There are two Real Estate Bureau attorneys who were let go who were doing, you know, land acquisitions, easements, things such as that. Remaining in that bureau are three attorneys who are picking up the work. I also have a couple of attorneys in the General Municipal Bureau who were prior real estate attorneys, who I know can fill in where necessary without any training, that's even before I do the cross-training.

In the General Municipal Bureau, we let go of two attorneys. One, quite frankly, when I asked, you know, how much of his work we would need to pick up I was told he didn't have a lot going on right now, so there's not much to fill in there. The other attorney was doing a lot of contracts, which is another area that I want to look in, because my understanding is that sometimes contracts are a little slow to come out of the department, which again, I don't really accept that that's necessary. I think we can streamline that process. And I have -- I already have an attorney looking at that and she started that a couple of weeks ago to see how we can cut down that time. So she is going to be taking over a lot of the contract work that the other attorney was doing.

In Family Court we let go of five Family Court attorneys. I'm going over to Family Court tomorrow. I'm going to be meeting with the Administrative Judge, Judge Freundlich, and a couple of the other Family Court Judges to discuss the issues that they have. This was scheduled before this even occurred. I anticipate that this may come up. But I have been speaking with the Bureau Chief. First and foremost, we have to have all those parts covered and that certainly would be done. What I question is I want to make sure that we have a sufficient amount of attorneys to get the other work done; the paperwork. And, you know, I'm committed to doing that. That's where a lot of the cross-training is going to come in, to have someone cover parts over in Family Court Bureau, whether they be support parts and to get that paperwork done.

There is still 20 attorneys left in that bureau. At most, on any given day, we have to cover 17 parts. So clearly, you know, those parts will be covered. There were two attorneys in General Litigation let go. And again, those cases -- they didn't have huge caseloads. I anticipate the other attorneys are going to take over those caseloads. And if need be, I have attorneys in the Tort Bureau who didn't lose anybody who certainly can fill in on any cases that we need to send somebody to court. And then there were the two part-timers.

LEG. STERN:

And as it relates to these positions that you've just been discussing, to what extent, if any, do we receive any type of reimbursement from the State or Federal Government.

MR. COHEN:

Right. In the Family Court Bureau we receive reimbursement. For child support activities, we receive 79.4%, that's broken down at almost 60% in Federal dollars and 20% in State dollars. And for the non-child support Family Court activities, we get reimbursed 17.85% in Federal money. And, again, that's paperwork. I don't have to have attorneys signed to the bureau to get that reimbursement. It's the work that's done that gets reimbursed. So we're going to ensure that whoever goes over there to fill in will be filling out the paperwork, and that will get done. So we're not going to lose any reimbursements.

LEG. STERN:

I want to make sure that that's clear, that point, that to the extent we receive State or Federal reimbursement, it's not reimbursement that is tied to the particular title or position, it is tied to the work that's performed, and so that any attorney that you've assigned within your office, as long as they're performing the work, would remain eligible for reimbursement.

MR. COHEN:

Exactly. And the flip side of that would be true, too. If I'm having Family Court Bureau's cross-training to do work outside of the Family Court, their monies would not be reimbursed. That's the, you know, I guess it's basically, you know, per hour that they're working on file, that's how that's reimbursed.

LEG. STERN:

Talk a little bit outside counsel -- familiar with what we have spent, say, in the past year, two years,

on outside counsel. If you're familiar with what that number is for the coming year and how you see that working.

MR. COHEN:

I have a breakdown of what was paid in actual outside counsel dollars. You know, for example, 2011 we paid \$1.2 million in actual outside counsel figures. This year we're budgeted at 1,065,000. That number fluctuates. My understanding is that the category of cases have not fluctuated. The department sends out certain cases to outside counsel based on, you know, needs such as medical malpractice, which is a specialty. We have conflict cases. My sense is that the numbers fluctuate depending on the amount of cases that fall within those categories. So I have no intention of sending out any additional cases other than what fall within the categories that we already send out.

LEG. STERN:

I know that this is a question that will probably be asked 20 different ways, or at least 18 different ways, but you are confident that even with the reduction in attorney manpower in your office that there won't be any increase in the need for outside counsel going forward.

MR. COHEN:

Yes, I am very confident that -- although I have spoken to County Executive Bellone about this, and he has assured me that there are issues, that I would discuss that with him, but, you know, I have done the evaluation and I am very confident that there will be no need for any additional attorneys.

CHAIRMAN MONTANO:

Okay. Legislator Kennedy. But before that, I have to apologize because one of your responses I kind of chuckled, but it wasn't directed at you. What happened was that when you mentioned the memos, the formality of the memos, I can't tell you how many times in the past I requested memos. I never saw one written, so, you know, I guess I know where they went now, and that's what I was reacting to. We had requested on occasion a written documentation, and we may in the future ask for a written memo outlining certain issues where, you know, that come before us. You know, we would like to have that kind of corporation.

We're not going to be asking for memos on every issue, but there comes a time where we would say could you give us the analysis so that we can look at what we have before us, because sometimes there is a conflict between the County Attorney's Office opinion and our own Counsel opinion, and we like to address that. That was the nature of what I was reacting to. Legislator Kennedy, you had some questions?

LEG. KENNEDY:

I do, Mr. Chair, thank you very much. Good morning. Welcome and congratulations for having accepted the position with the Administration. I am pleased that you've had the experience with the bench, and also your experience with the town. I'm usually inclined to address someone like you as Judge, but I will not in this case.

I have had some conversations already. As a matter of fact, Mr. Zwirn and I have spoken a number of times and I spoke with the County Executive yesterday. Your assessment of the Law Bureau and your indication, I guess, that you can meet the missions with these fewer personal in my opinion is admirable, but I question the ability to actually have that go through. I would very much like to be a fly on the wall when you meet with Judge Freundlich because as you know very well, this is an Administrative Judge who suffers absolutely no excuse and, as a matter of fact, I know for a fact that cases have been moved in a different direction for attorney's failure to appear promptly at 9 a.m.

I am concerned that the cases and the families that are our clients are going to be compromised. I'm concerned that the revenue that's realized, particularly on the enforcement part, is going to lag when that is probably one of most heinous areas for parents refusing to support their children and the burden falling upon citizen taxpayers to have to pick up that load. That is something that actually needs to be enhanced if not reduced. So I believe five attorneys is, in my opinion, more than needed to be put down. You have done the numbers.

Let me ask you to react to this. I mean, a municipal attorney basically at 40 hours a week, over 49 weeks is throwing about 2,000 hours. You take 12 of them out, that's 24,000 hours worth of time. How do you plug that? How do you plug that.

MR. COHEN:

Again, you know, through -- first of all, I expect the attorneys to get the work done. When I was a District Court Judge and there were times where, you know, the District Attorney's Office would have scheduling issues, whether, you know, one of their DA's was out in Riverhead second seating a trial, my attitude as a Judge was that's not my problem, and I certainly expect the Family Court Judges to have that same attitude. It's not their problem. It's my responsibility to make sure the work is getting done, to make sure that my attorneys are prepared.

So one, you know, how does the work get done? For the attorneys who are still here, they have to get their work done. If that means they have to work a little harder or work a few more hours, that's one thing I expect. I know I'm working a lot of hours and I expect the staff to as well.

The second part of that is, again, you know, the work fluctuates in any bureau, whether it be Real Estate, Torts. I mean, that's just the nature of the law business. I want to make sure that the attorneys are cross-trained that they can fill in where needed in a certain bureau. I mean, I make this commitment specifically with respect to the Family Court Bureau, that if they need additional attorneys assigned to the Bureau, there will be additional attorneys assigned to the Bureau, no question. My first priority has to be covering the courts and nothing less can be expected. I've made that commitment to numerous people. I'll make it to Judge Freundlich tomorrow. You know, me personally, you know, I love children. I coach probably more teams than I know what to do with. I have three basketball teams, I coached Little League for eight years. I understand how important these cases are, so they certainly will not get short shifted for any reason, and certainly not because we had to let some attorneys go.

LEG. KENNEDY:

One of the attorneys that was dismissed, my understanding is he had 28 years of experience and he functioned not only as Bureau Chief for one bureau, but, in fact, it was dual bureaus that he was servicing. The law is the law. We are all charged with the responsibility to be proficient in it, but there really is no replacement for institutional knowledge. So do you feel that you've got the depth within the remaining attorneys that are there?

MR. COHEN:

Yes. In fact, during my conversations with the Bureau Chief, which started as soon as I got here, he's indicated to me that he has some real stars over there that certainly can pick up the slack for any of the attorneys who -- and any of the attorneys' knowledge that was let go. In fact, I have in my Real Estate Bureau an attorney who came from the Family Court Bureau who is somewhat an expert in the field, he's written books, and he's certainly one of the attorneys that I have in mind that listen, if I need someone go over to that bureau to cover cases, he's certainly more than capable to do it as well.

LEG. KENNEDY:

The County Attorney's Office, in my experience, is in many respects almost like a large multi-area

firm. The County Attorney is called on to advance the initiatives that we bring forward, to defend the municipal corporation, to be charged with knowledge of Federal legislation, State legislation, multiple, multiple parts.

You mentioned the contracts folks, and I feel responsible to just point out, again, having worked with one of the attorneys that was let go in a prior life before I was elected, of the knowledge and the skill and having had your experience at the town level, I can tell you at the County level the need to build and construct a tight, almost bulletproof, municipal contract is critical, and sometimes it does take time to assemble those elements unique to a department and the basic form of a contract that protects us. How are you going to -- how are you going to handle that?

MR. COHEN:

At the town level, you know, when I became Town Attorney, one of things that concerned me was that the office as a whole, and really the town as a whole, didn't have a handle of what was out there, when contracts were expiring, the forms that we were using, you know, as a starting point in negotiating any contract. So I had assigned an attorney to create a tickler system so we knew when contracts were expiring. I wanted to know, and this was falling through the cracks at the town, were we getting the proper insurance paperwork on a yearly basis if the contract exceeded one year. You know, were we getting those documents to insure that the contract was being complied with.

So now I'm at the County, and I'm learning there is the same issues. You know, we don't -- I spoke to Legislator Calarco who indicated, you know, that similar type contracts, you know, same agency, same contract, two different forms. If we're creating -- if we're sending out two forms on the same type of issue, that is wasted work to be honest. I mean, that should just be almost a pro forma. If you are renewing a contract or if the same agency is getting the same contract every year, the only issue really should be, one, were there any issues that arose in that year that need to be addressed in the contract, and if so, what are those issues. Otherwise, that contract automatically should just be sent out, get it signed, and I think that's part of the problem, is that there's no mechanism to do that right now. And that's one of the things that I want to work on, I think it's important.

I also know, just based on some of the litigation that we have, that certain things aren't being turned over pursuant to the contract, like the insurance paperwork, or it's being turned over and the right people aren't reviewing it to make sure it complies with the contract.

So it just so happens that same attorney I had at the town is now with me at the County, and I've instructed her to do what she did at the town, which is figure this out. Let's figure out how to have a system in place that we know when contracts are expiring, we know what's contained in the contract so if a similar contract issue comes up, bang, it's in this contract, this is the clause. We're just going to plug that clause into this contract. And, yes, I mean, certainly every contract is different and some of the language we'll almost certainly have to change, but that -- it creates less work and more efficiency in getting the contracts done.

LEG. KENNEDY:

Thank you. There's two areas that I want to speak to you about, and I guess we have to do it in general terms because it does involve active litigation right now, but you and I have been exchanging e-mails as you have with some of my colleagues. You know, it goes to the area of conflicts and it also goes to the area of outside counsel, as Legislator Stern had alluded to. I have some serious, serious concerns about this firm and the role that they have been put into with these two pieces of litigation, which are widely divergent, and the positions are opposite.

MR. COHEN:

I have a call into that firm. I've researched this issue. I do want to give him an opportunity to

discuss it with me before I make the final determination, and I will get back to you on that. But I don't necessarily disagree with your position.

LEG. KENNEDY:

Okay. I have to ask it one more time, then, as to the hours that we spoke about that I agree with you, maybe you can discuss or ask existing staff about a new set of expectations and what you might be looking for from them, but even if you take a conservative 250 or \$300 an hour for outside counsel, we would be talking about a \$4 million additional expense if we had to make up those hours through outside counsel. You are telling us you don't expect that you're going to have to go that route.

MR. COHEN:

No. The categories where the cases will be sent out to outside counsel are not changing. I cannot commit to you that the cost may go up based on the amount of cases that come in through those categories, but I can commit to you that I'm not sending any additional cases out that do not fall within those categories.

LEG. KENNEDY:

Okay. Finally, there's one area that I would ask you to just speak to a little bit under County Law and the Charter. And that is your responsibility, your fiduciary responsibility, as the County Attorney to all of us. In essence, you have 19 clients. How do you see fulfilling that or giving that due diligence.

MR. COHEN:

Right. I agree with that and -- because that's what the Charter calls for, and I take that responsibility very seriously. I have an attorney right now researching all of these conflict of interest issues. These go out, you know, far above what you would deal with I think in a private firm. And, in fact, the opinions that I've reviewed already from the Attorney General or from the Disciplinary Committee, you know, talk about the special relationship that government has to its various agencies, its Legislature. It's not an easy answer. It's why it's taken me so long to get back to you on the other issue. This is, by the way, going to be one of those cases where this attorney is giving me a formal opinion, because I think it's that important.

LEG. KENNEDY:

And you'll be able to share that with us?

MR. COHEN:

I'll be able to share with you, yes, what the policy and what the conflict of interest issues are. You know, to be honest, it's not going to be black and white on every case, but I recognize that there's unique issues here and that's why, you know, I just couldn't get -- I couldn't get a handle on it just by, you know, trying to research it in a half an hour or an hour because it's -- the depth of it is large.

LEG. KENNEDY:

The last thing that I leave you with is good luck in the job, understand the expressions, you know, the things that we've concerned. And then finally I will tell you as your client, while there may be some logic in the way that you went about the reduction, I object to the method. I do not think that employees of the County, who served loyally for in some cases decades, should have received in essence only two hours notice. They're exempt; I understand that. But I would have hoped that there would have been a more extended period of time for them to put things in order, and for that matter, for there to be some at least some consultation with the Legislature.

MR. COHEN:

I appreciate that.

LEG. KENNEDY:

Okay.

CHAIRMAN MONTANO:

Thank you, Legislator Kennedy. Legislator Stern has some follow-up, and then Legislator Nowick has some questions.

LEG. STERN:

Yes, thank you, Mr. Chairman. So we're going to be down lawyers, and that's now, and so your vision is for this cross-training effort to have the remaining attorneys be able to pick up cases on a moment's notice and be able to handle what's necessary. My question to you then is how are you going to do that? These are trained lawyers that have been doing what they've been doing for quite some time. You are going to be asking them to get involved now in some pretty specialized area of practice pretty quickly. How do you plan on bringing them up to speed? What kind of training are they going to be under? Who is going to be doing that training going forward?

MR. COHEN:

Right. Well, here's the first step. I've notified John Holownia, who is the Bureau Chief in Family Court, that I'm coming over tomorrow. He is going to be with me in the meetings with Judge Freundlich. I'm going to get there in the morning and I'm going to be the first one trained, because I want to have a grasp on exactly what happens over there so I can determine to start which attorneys are the best to do this. John and I are going to set up what the training is going to involve, whether it involves having someone come over in the morning, or even on parts that are covered having them sit in the Family Court in the part assisting the regular attorney there to learn what goes on so that in a need they can fill in.

The other thing is I don't anticipate it being, you know, a last minute thing. What I'm trying to work out with the Bureau Chief is hey, you need to let me know in advance what days we're going to have trouble in a part, so that way I can send the attorney over to Family Court ahead of time, whether it be days, two days, three days, to review the cases that are on that day. Because, again, when I was a District Court Judge I didn't want to hear an attorney come in and say, "Listen, I was just assigned this today, I don't know the case." That really wasn't an acceptable answer, and I don't expect other judges to accept it from my attorneys.

But, again, I'm going over there tomorrow so I can get the training and figure out how much training is needed. I will be honest, I anticipate filling in in the courtrooms a couple of days so I have a sense on what happens because I need to understand it before I have other attorneys doing it as well.

CHAIRMAN MONTANO:

Legislator Nowick.

LEG. NOWICK:

Just a question. The different departments that suffered a loss of employees. Were they -- were these -- were they not busy? I mean, were they -- I'm not understanding. In the last few years was it that they didn't have a lot of work, they didn't have a caseload?

MR. COHEN:

No, they had caseloads. You know, I can't really speak to what they did or didn't do before I was here. I spoke to the Bureau Chiefs to determine what positions were the best. Actually, the

original conversations weren't so much with letting people go, it was getting a sense for who was doing what work and then, you know, later on when I was asked to consider this other issue I already had in place the positions that I could fill in for, you know, that the work wasn't as much as maybe some of the other people were doing. Or in certain bureaus, you know, I anticipate a certain bureau not having as much work in the future which allowed me to make certain decisions. But I don't want to say that they weren't busy or that they weren't doing work because I don't necessarily think that's true.

LEG. NOWICK:

What court do you think is the busiest court?

MR. COHEN:

What court? Right now Family Court Bureau is what I have to cover most. For pure volume, you know, they have on any given day up to 17 courtrooms open.

LEG. NOWICK:

And they lost the most employees?

MR. COHEN:

They lost the most.

LEG. NOWICK:

You know, here's the thing, and I respect your legal expertise, but I just want to tell you where we're coming from. I will let you know a little bit about the background of where all of us are coming from. Most of us here sat in the Budget Working Group, and we spent days and days and hours and hours and we had very, very difficult decisions to make. Some of those decisions, as you know, if you had read the paper or you were at any of our meetings, some of the problems were that we could only fund a group of 600 and some-odd employees for six months. We labored over that. We had about 88 other employees that we had to let go immediately and I think we dwindled it down because it so pained us to do it.

And so with all of that, we balanced the budget, or we thought we did, or we had a lot of -- okay, and we suffered with that, with all of those people losing their jobs with mortgages to pay, but we made it work. And it was such a shock, and I don't know about my colleagues, but it was such a shock to me to see that with all of that fighting to get less than 88 people, with all of that, 13 more people lose their jobs. I have to tell you, it just -- it just pained me and I have a feeling my colleagues feel the same way because we suffered with that. Am I correct? And that's where we're coming from with this. It's not -- I'm sorry if it sounds like we're attacking you, but we went through a lot to have as few people as possible lose their jobs and we were upset at what we did, let alone this. It's troubling.

MR. COHEN:

And, you know, I think it goes without saying I certainly didn't take this lightly. You know, I certainly understand the feelings and, you know, the issues involved for the people who were let go. And I mentioned this to one of my colleagues, you know, through the four years when I was a District Court Judge, letting these people go was much harder than sentencing people to jail, you know, because these people, they didn't do anything wrong, and I understand that. So I certainly, you know, this was not done in a cavalier fashion in any sense.

CHAIRMAN MONTANO:

Legislator Kennedy, you had a follow-up?

LEG. KENNEDY:

Just one other item that I guess I will ask not so much you, Mr. Cohen, but Mr. Zwirn. We just talked in great length about what the consequences of these reduction in hours will be and the ability for the department to operate. And what I read was that this was characterized as saving about \$1.8 million. But I'm going to say to you, quite frankly, I'm surprised that this County Executive would then elect to apply that 1.8 million towards his economic plan, because it almost appears like he's willing to downplay, minimize or forego enforcement efforts for deadbeat parents and try to put this different focus on the economy. That's a bad message. That's a dangerous message.

CHAIRMAN MONTANO:

We'll deal with the issue -- I want to separate the issue of the \$1.8 million savings in the Law Department, or cut, and leave that, if you will, for a discussion that I understand will take place on Tuesday. Because they are two separate issues.

I guess I'll go and I'll end. Mr. Cohen, I know you prefer to go by Dennis, right?

MR. COHEN:

Yes.

CHAIRMAN MONTANO:

I, like John Kennedy, would normally refer to you as Judge, but Dennis is fine.

MR. COHEN:

That's great.

CHAIRMAN MONTANO:

Somewhat informal. I just want to say for the record we did have several private conversations about your role, and certainly we discussed that earlier this morning as I said, yourself and Legislator Stern, myself and Ben and some other members of the Administration with respect to this -- it's approximately a 20% cut in the office. And what I said there I'll just put on the record. What that tells me is that if you can work with 20% less today than they did, you know, last month, then it implies to me that -- the statement is that the office was bloated by about 20%. You had 20% more than you need. Or that you've made a decision that you can run the office with less personnel and remain as effective or as efficient as it was before. Understanding that we have no settlement money in our budget, anything that has to be settled has to be bonded, and that's been a big issue. You know, the Legislature has never set up a Reserve Fund for settlement of cases.

Number two, in the past I've asked the County Attorney's Office to sort of give us an assessment, maybe a year end assessment, and I understand that this is not an exact science, but to give us an assessment of what our exposure would be to settlements so that when we do our budget we can basically plan and maybe get away from bonding settlements or at least a certain amount of settlement.

You discussed with Legislator Stern the issue of outside counsel. We will clearly be watching that and we have your commitment that if there is a need for further money it won't be because of this 20% cut, it will come from the fact that there are more cases in the categories that require outside counsel, and that's certainly understandable. We can discuss that down the road.

I'm going to make a motion to approve the appointment of Dennis Cohen, to move 1052 to approve. I need a second and I want to make a statement on that. Do I have a second?

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Second by Legislator Stern. I just want to say on a personal note I really haven't engaged in the conversation that you've had with the other Legislators today, but I said this privately and I will say it publicly. I've been an attorney 36 years and I've worked in the Attorney General's Office, I've worked in the Federal Government, I've worked in government, I've seen law offices operate. I ran my own law office for many years.

I'm not so sure that this decision is one that I would have made or that I would have recommended. However, because there's a new Administration, because you're the new County Attorney and you feel that this can be done, that this is going to work, we -- and I know certainly I am going to go along with that and support it in spite of my reservations on this issue. I hope it works, because our role here is oversight and, you know, I think it's been expressed very clearly that when you come in and you immediately cut 20%, I feel it's got to have an impact. I hope that you can resolve these issues with the Administrative Judges. I hope they are as tolerant as you feel they might be. I'm not quite so sure having dealt with them myself.

With that, though, I think it's important that we move your nomination forward. I want to congratulate you. I'm going to ask for a vote. We have a second by Legislator Stern. All in favor? Opposed? Abstentions?

LEG. NOWICK:

Abstain.

CHAIRMAN MONTANO:

One abstention. **(Vote: 4-0-1-0 Abstention - Legislator Nowick)**. The resolution is now going to the Legislature for a full vote on Tuesday. I guess we should probably request your presence there. I think there will be members that will want to speak to you as we did here. With that, thank you very much. Good luck to you and we'll be talking soon.

MR. COHEN:

Thank you.

LEG. STERN:

We are going to go back to an item on the agenda that we passed over just a few moments ago. It is ***IR 1003-2012, Authorizing technical correction to Resolution No. 863-2011, instituting a lag payroll in Fiscal Year 2012 for employees within Suffolk County Board of Elections in Bargaining Units 21 and 24. (Pres. Off.)***

I will make a motion to approve. Second by Legislator Calarco. All in favor? Any opposed? Any abstention? I'll note the recusal of Legislator Montano and the recusal of Legislator Nowick. IR 1003 is approved. **(Vote: 3-0-0-0-2 Recusals: Legislators Montano and Nowick)**

CHAIRMAN MONTANO:

Thank you, Legislator Stern. I think we're at -- we approved 1004, am I correct? All right. We are at ***IR 1005-2012, To reduce the printing costs associated with the County's Direct Deposit Payment System. (Cilmi)***

I'm going to make a motion to table. Do I have a second?

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Any other motions?

LEG. KENNEDY:

On this one, George, I thought this had to have a public hearing. It doesn't have to have a public hearing? I know I have spoken at length with the sponsor about this one. As a matter of fact, I am a cosponsor on the resolution. I believe the intention is to basically go forward with something that many of us have right now, which is the electronic notification on our payroll stubs. There are some savings that would be incident to it. I believe it's got some values and some merit so I will make a motion to approve on it.

CHAIRMAN MONTANO:

Do we have a second on that?

LEG. NOWICK:

Second.

CHAIRMAN MONTANO:

Second by Legislator Nowick. So we have two motions. Mr. Zwirn, do you -- does the County Executive have an opinion with respect to this issue?

MR. ZWIRN:

We think it's a good idea, but I would love to hear what the Comptroller has to say.

CHAIRMAN MONTANO:

That is my point also.

MR. ZWIRN:

I would just maybe table the one session to have him come and make his comments, because I think -- I think it's critical that he have a role in this. I don't know if he recommended it or where it came from.

CHAIRMAN MONTANO:

Exactly. That's where I was going to go. I would like to hear, you know, know more about it, hear from either the Treasurer or the Comptroller, whoever has jurisdiction, and if they can get a letter -- in fact, I'll ask Bob if we can send something over to them and get their official statement as to whether or not this is something that we should move. We can then move it. If they think that there's a need for further development then we can do what needs to be done on that level.

The motion to table goes first. All in favor? Raise your hand I guess? All right. That's three. Opposed? Abstentions?

LEG. KENNEDY:

I'll be happy to go ahead and agree with tabling for one cycle. I think what we've spoken about makes sense. We should hear from the two County-wides, so that's fine to table it for one cycle.

CHAIRMAN MONTANO:

Let me be clear. The motion is not to table for one cycle. That motion doesn't exist. It's tabled. However, the concept or the idea is that at the next meeting we should have the information so that we can make a determination. But if we don't have that information then I would probably be

looking to table again. So the idea is to get that before us. So it's just tabled. *(Table 5-0-0-0)*

LEG. KENNEDY:

Which I understand, Mr. Chair, but we are going to go ahead and send the invitation out the two County-wides to either brief us or be before us?

CHAIRMAN MONTANO:

Absolutely. I am going to -- Bob's going to send an e-mail to the Comptroller asking for his comments and his opinion with respect to the legislation. We will forward to all the members of the committee a copy of that e-mail, it will be brief, and when the response comes in you'll get a chance to see that. Hopefully we can resolve it by the next meeting. Is that fair?

LEG. KENNEDY:

Yup. Okay. Thank you.

IR 1007-2012, Requiring County Departments to post promulgated rules and regulations on departmental websites. (Cilmi)

LEG. KENNEDY:

This one, as a matter of fact, we had conversation and I believe the sponsor has asked that we table it for one cycle with the possibility that he'll consider an alternate way to go ahead and implement.

CHAIRMAN MONTANO:

Okay. The only comment on that is with respect to this table for one cycle. We are tabling it. Okay. That's a motion. I'll second it. All in favor? Opposed? Abstentions? Motion carries. *(Table 5-0-0-0)*

IR 1008-2012, Adopting Local Law No. -2012, A Charter Law to amend local legislation filing requirement. (Pres. Off.)

This has to be tabled for a public hearing, I believe. I will make the motion.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Second by Legislator Stern. All in favor? Opposed? Abstention? Motion carries. *(Table 5-0-0-0)*

IR 1009-2012, Adopting Local Law No. -2012, A Charter Law to clarify Presiding Officer's authority to establish and appoint special legislative committees. (Pres. Off.)

We need to table this for a public hearing. I'll do same motion, same second, same vote, if that's okay with everyone. *(Vote: 5-0-0-0)*

IR 1012-2012, Adopting Local Law No. -2012, A Charter Law to require legislative approval of Department Rules and Regulations. (Cilmi)

We need to table this for a public hearing. I'll do same motion, same second, same vote. *(Table 5-0-0-0)*

Moving on to ***IR 1017-2012, Adopting Local Law No. -2012, A Charter Law to promote openness and participation in legislative business. (Cilmi)***

Same issue, we need to table for public hearing. I'll do same motion, same second, same vote.
(Table 5-0-0-0)

Moving on to ***IR 1044-2012, Authorizing certain technical correction to Adopted Resolution No. 969-2011. (Co. Exec.)***

I will make a motion to approve and place on the Consent Calendar. I need a second.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

By Legislator Stern. Very quickly, Counsel, could you just spell out the nature of the technical correction?

MR. NOLAN:

It's a very technical correction to a grant resolution that we previously approved.

CHAIRMAN MONTANO:

All in favor? Opposed? Abstention? Motion carries. Place this on the Consent Calendar. ***(Table 5-0-0-0)***

We already did 1052, appointing the County Attorney. There is a Procedural Motion.

Procedural Motions

PM.01, Improving legislative meeting transparency and openness by requiring meeting audio tapes to be posted immediately online. (Hahn)

Counsel, would you give us an explanation of this and why it's a Procedural Motion?

MR. NOLAN:

It's a Procedural Motion because it's internal to the Legislature. It's directing our Clerk to upload the audio recordings of our meetings, both General and committee, within two hours of their completion.

CHAIRMAN MONTANO:

Is there a fiscal impact on this? Is this going to cost money, is this going to save money? Is there a requirement that a fiscal impact statement accompany this? Do you know if one is there?

MR. PERNICE:

I don't believe one was filed. I'll check.

CHAIRMAN MONTANO:

Do we need one?

MR. PERNICE:

I don't believe you need it for a Procedural Motion, but I will just double check.

CHAIRMAN MONTANO:

All right. Let me ask you this. Is there a financial impact either way.

MR. PERNICE:

I wouldn't think so but I definitely would want to check with Allen Fung in the Technology Unit.

CHAIRMAN MONTANO:

Does anyone have any questions? We don't have a motion yet.

LEG. KENNEDY:

I do, Mr. Chair. I want to hear from Madam Deputy Clerk as to the ability to go ahead -- or from Mr. Laube, from our Clerk, what does -- what are the implications of this.

MR. LAUBE:

How are you?

CHAIRMAN MONTANO:

There is no motion on this yet. We are just discussing it.

MR. LAUBE:

Okay. Just to update me, I listening in the back and between walking up I missed one sentence or two.

LEG. KENNEDY:

Well, it's the Procedural Motion.

CHAIRMAN MONTANO:

It's the Procedural -- what I asked was -- I'm sorry, John. What I asked was whether or not there was a fiscal impact statement. It's not required so one is not attached. And then the second question was is there a fiscal impact if we approve this Procedural Motion, either negative, positive, neutral. That's all we're asking.

MR. LAUBE:

I believe there to be no fiscal impact. It is a courtesy I was hoping the Clerk's Office could provide one, to our County employs, our staff and the public.

CHAIRMAN MONTANO:

So you support this resolution.

MR. LAUBE:

Wholeheartedly, yes.

CHAIRMAN MONTANO:

With that, I'll make a motion to approve.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Second. Are there any other motions? All in favor? Opposed? Abstention? Motion carries.
(Table 5-0-0-0)

There being no further business of the committee, we are hereby adjourned.

(THE MEETING WAS ADJOURNED AT 11:09 A.M.)