



Lawyers' Responses to Audit Letters: Law, Practice, and A Few Tips

Thursday, September 8, 2022

Peter M. Thorson, City Attorney, Temecula, Jurupa Valley,
Shareholder, Richards Watson Gershon

DISCLAIMER

This publication is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised in these materials. The League of California Cities does not review these materials for content and has no view one way or another on the analysis contained in the materials.

Copyright © 2022, League of California Cities. All rights reserved.

This paper, or parts thereof, may not be reproduced in any form without express written permission from the League of California Cities. For further information, contact the League of California Cities at 1400 K Street, 4th Floor, Sacramento, CA 95814. Telephone: (916) 658-8200.

8-8-22

Lawyers' Responses to Audit Letters: Law, Practice, and A Few Tips

League of California Cities

Annual Conference

September 8, 2022

Peter M. Thorson
City Attorney of Temecula and
Jurupa Valley
Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, CA 90071

Lawyers' Responses to Audit Letters: Law, Practice, and A Few Tips

Each year, cities retain accounting firms to audit their financial statements as of the end of the prior fiscal year. As part of that audit, the auditor will request, through the city's finance director, that the city attorney, and other lawyers¹ representing the city provide the auditors with a description of pending or threatened litigation, asserted claims and assessments in accordance with "Financial Accounting Services Board Accounting Standards Codification Subtopic 450-20, Contingencies--Loss Contingencies" ("ASC 450"), formerly known as Financial Accounting Standards 5.

According to ASC 450, the lawyer should provide the following information to the auditor: (1) a description of the nature of each matter, (2) the progress of each matter to date, (3) how the Company has responded or intends to respond (for example, to contest the case vigorously or to seek an out-of-court settlement), and (4) an evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss (the "Audit Letter").

The request for an Audit Letter creates tension between the auditor's interest in understanding and documenting any potential financial losses that might affect the city's financial position and the lawyer's interest in protecting the confidentiality of attorney-client communications.

In response to ASC 450, the American Bar Association in 1975 adopted the "Statement of Policy Regarding Lawyer's Responses to Auditor's Requests for Information" along with commentaries on the Statement that form an integral part of the Statement (the "ABA Statement"). The ABA Statement recognizes the principle that "our legal, political and economic systems depend on, to an important extent, public confidence in public financial statements" but that the "public interest in protecting lawyer-client confidentiality is fundamental." (Preamble to ABA Statement.) The ABA Statement provides considerable guidance to attorneys dealing with these principles while also fulfilling the lawyer's role in responding to the auditor's inquiries.

Careful and thorough preparation of the Audit Letter has become more important in recent years as the audit of the city's financial statements has become an important part of grant applications, financings and documenting compliance with grant conditions.

Although the ABA Statement has not been formally amended since its adoption in 1975, there have been several commentaries on its provision providing interpretations and responses to changes in

¹ The focus of this paper is on the application of the audit requirements to cities. The city attorney of each city will have primary responsibility for the completion of the response to the auditors. We recognize, however, that lawyers may be retained by cities outside of the city attorney's office or the city attorney's firm. Therefore, in this paper, we will use the term "lawyer" rather than "city attorney." This usage is also consistent with the language of the ABA Statement.

the Financial Accounting Services Board Accounting Standards and the auditing standards of the American Institute of Certified Public Accountants.

The ABA Statement as well as the provisions of Financial Accounting Services Board Accounting Standards and the auditing standards of the American Institute of Certified Public Accountants pertaining to requests for information concerning claims and litigation, along with their respective commentaries, are compiled in the “Auditor’s Letter Handbook, Second Edition” available for purchase from the ABA at www.americanbar.org.

This paper provides some practical guidance in dealing with audit letters.

THE CLIENT MUST SEND A LETTER TO THE LAWYER REQUESTING THE LAWYER TO RESPOND TO THE AUDITOR’S REQUEST FOR INFORMATION ON CLAIMS AND LITIGATION.

Paragraph 1 of the ABA Statement provides that the lawyer may respond to the auditors inquiries only if directed to do so by the client. Attachment A to this paper is a sample letter from the client developed as part of ASC 450 requesting the lawyer describe certain loss contingencies affecting the city and respond to certain questions concerning those loss contingencies.

The sample letter provides that the lawyer describe claims and litigation matters in which the lawyer and the lawyer’s law firm have engaged and “devoted substantial attention.” Often the letter will limit the request to material claims exceeding a certain designated threshold dollar amount.

The letter also requests the lawyer confirm to the auditors the lawyer’s understanding and acceptance of the ABA Statement’s policy regarding “unasserted claims” that will be discussed below.

CLAIMS AND LITIGATION MATTERS THAT MUST BE ADDRESSED IN THE AUDIT LETTER

ABA Statement Describing Loss Contingencies to be Reported.

Paragraph 5 of the ABA Statement describes the “loss contingencies” that will be the subject of the auditor’s inquiry and described in the audit letter:

“(5) *Loss Contingencies.* When properly requested by the client, it is appropriate for the lawyer to furnish to the auditor information concerning the following matters if the lawyer has been engaged by the client to represent or advise the client professionally with respect thereto and he has devoted substantive attention to them in the form of legal representation or consultation:

(a) *overtly threatened or pending litigation*, whether or not specified by the client;

(b) *a contractually assumed obligation* which the client has specifically identified and upon which the client has specifically requested, in the inquiry letter or a supplement thereto, comment to the auditor;

(c) *an unasserted possible claim or assessment* which the client has specifically identified and upon which the client has specifically requested, in the inquiry letter or a supplement thereto, comment to the auditor.”

The ABA Statement provides that the lawyer will usually provide information to the auditor on “overtly threatened or pending litigation” but will rarely provide information to the auditor on “contractually assumed obligations” or an “unasserted possible claim or assessment.”

Claims and Litigation Against the City that Should be Included in the Audit Letter.

Claims filed with the city under the Government Claims Act (Government Code Sections 905 to 907) and litigation qualify as “loss contingencies” and require the lawyer’s appropriate response. These are written documents specifically demanding that the city pay certain funds to the claimant based on acts or omissions of the city or city employees.

Other types of matters may also be considered claims requiring a response from the lawyer even if not formally submitted as written claims.

Government Code Section 905 contains a long list of “claims” for which a formal claim under the Government Claims Act need not be presented but may still qualify as “loss contingencies” for the purposes of the Audit Letter. Prominent among these exemptions are claims for inverse condemnation damages (Section 905.1), wages and salary (Section 905(c)), refunds or adjustments of tax, assessment, fee or charge (Section 905(a)), special assessments (Section 905(h), stop notices or mechanics’ liens (Section 905(b)) workers’ compensation (Section 905(d)), or claims from other governmental entities (Section 905(i)).

Petitions of writs of mandate are common against cities and public entities. These petitions generally seek to invalidate a governmental action based on an alleged failure to comply with statutes such as the California Environmental Quality Act or statutes and ordinances governing land use entitlements. While these petitions generally do not specifically allege and request damages from the city, most request the payment of petitioner’s attorneys’ fees if the court grants the petition. The request for attorneys’ fees would qualify as a loss contingency that would need to be addressed by the lawyer in the audit letter. Similarly, petitions for writ of mandate to invalidate disciplinary actions against employees may seek back wages as well as attorneys’ fees.

Change orders in public works contracts also qualifies as claims under the loss contingency definition if the lawyer has engaged in and “devoted substantial attention” to the matter.

Disputes and disagreements often arise between city staff and vendors or service providers over the quality or delay in providing equipment or services. Most of the time these disputes and disagreements are resolved through negotiations between the vendors or service providers or the city staff. If, however, the lawyer has engaged in and “devoted substantial attention” to the matter and it is unresolved as of the applicable date of the audit letter request, the lawyer will likely need to address the dispute as a claim in the Audit Letter.

Unasserted Claims.

There are situations where the staff or the lawyer knows that an event or action by a city employee or employees could give rise to a claim for damages against the city, but that claim has not yet been asserted (“Unasserted Claims”). Examples include accidents involving city vehicles, police incidents, errors discovered in connection with tax and assessment calculations, or errors discovered in connection with fees involving service providers.

Paragraph 5 of the ABA Statement specifically provides that the lawyer should not disclose or comment on Unasserted Claims in the Audit Letter unless explicitly requested to do so by city management and under very limited circumstances.

The ABA Statement does, however, provide that:

“The auditor may properly assume that whenever, in the course of performing legal services for the client with respect to a matter recognized to involve an unasserted possible claim or assessment which may call for financial statement disclosure, the lawyer has formed a professional conclusion that the client must disclose or consider disclosure concerning such possible claim or assessment, the lawyer, as a matter of professional responsibility to the client, will so advise the client and will consult with the client concerning the question of such disclosure and the applicable requirements of FAS 5 [now ASC 450].”

The letter from the city to the lawyer requesting that the lawyer prepare the Audit Letter contains a request that the lawyer verify this understanding of the handling of Unasserted Claims. The Audit Letter itself (Attachment B) should contain this confirmation:

“Consistent with the last sentence of Paragraph 6 of the ABA Statement of Policy and pursuant to the City’s request, this will confirm as correct the City’s understanding as set forth in its audit inquiry letter to us that whenever, in the course of performing legal services for the City with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, we have formed a professional conclusion that the City must disclose or consider disclosure concerning such possible claim or assessment, we, as a matter of professional responsibility to the City, will so advise the City and will consult with the City concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5 [now ASC 450].”

PREPARATION OF THE AUDIT LETTER

According to ASC 450, the lawyer should provide the following information to the auditor in the audit letter: (1) a description of the nature of each matter, (2) the progress of each matter to date, (3) how the city has responded or intends to respond (for example, to contest the case vigorously or to seek an out-of-court settlement), and (4) an evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss.

In preparing the Audit Letter, the lawyer should also ask other lawyers in the law firm or the in-house city attorney's office if they have knowledge of any claims or litigation that should be reported.

Sample Forms of Audit Letters.

A sample form of an audit letter from a contract city attorney to the auditor is attached to this paper as Attachment B and a sample form of an audit letter from an in-house city attorney to the auditor is attached as Attachment C.

Attachment B is in large part the form provided in the ABA Statement with two alterations. First, a paragraph on the city's procedures for processing claims under the Government Claims Act has been added. Second, the ABA Statement form references Financial Accounting Standards 5, adopted in 1975 ("FAS 5"). FAS 5 has now been recodified as "Financial Accounting Services Board Accounting Standards Codification Subtopic 450-20, Contingencies--Loss Contingencies" and so that change in the numbering was added to the letter.

Description of the Claims and Litigation.

Of course, the critical part of the Audit Letter is the description of any claims or pending litigation.

The first three items of the auditor's request for information; (i) a description of the nature of each matter; (ii) the progress of each matter to date; and (iii) how the city intends to respond to the matter, are relatively straight forward but can provide a great deal of information to the auditor without revealing the lawyer's analysis of liability or potential damages.

The client letter requests that the lawyer provide the auditor with a description of each matter describing in simple terms including: (1) the type of case (breach of contract, personal injury, damage to property, writ of mandate to invalidate a governmental action); and (2) the alleged action or inaction of the city that has alleged caused damages to the plaintiff. For example:

"The complaint alleges that a city sidewalk had a three-inch offset, causing the plaintiff to fall and suffer a broken shoulder, broken arm and concussion. The complaint alleges the plaintiff will incur future medical expenses, partial loss of use of arm, present and future loss earnings."

The client letter also requests that the lawyer provide the auditor with "(2) the progress of each matter to date, (3) how the [city] has responded or intends to respond (for example, to contest the case vigorously or to seek an out-of-court settlement)." Here too, the lawyer can provide the auditor

with important information without revealing the lawyer's analysis of liability or potential damages. For example:

"The parties are engaged in extensive discovery concerning issues of liability and damages. In addition, the city has authorized the retention of expert medical witnesses to evaluate the plaintiff's allegations of personal injuries and the future treatment of these injuries. City has also authorized an economist to evaluate plaintiff's allegation of loss of earnings and future loss of earnings. Once discovery is completed, the court is likely to order the parties to mediation."

This statement provides the auditor with the lawyer's process for evaluating the allegations and working towards a resolution of the matter.

Paragraph 5 of the ABA Statement provides that the lawyer should normally refrain from expressing judgements as to the client's liability in a case or the potential damages:

"In view of the inherent uncertainties, the lawyer should normally refrain from expressing judgments as to outcome except in those relatively few clear cases where it appears to the lawyer that an unfavorable outcome is either "probable" or "remote;" for purposes of any such judgment it is appropriate to use the following meanings:

(i) *probable* - an unfavorable outcome for the client is probable if the prospects of the claimant not succeeding are judged to be extremely doubtful and the prospects for success by the client in its defense are judged to be slight.

(ii) *remote* - an unfavorable outcome is remote if the prospects for the client not succeeding in its defense are judged to be extremely doubtful and the prospects of success by the claimant are judged to be slight.

"If, in the opinion of the lawyer, considerations within the province of his professional judgment bear on a particular loss contingency to the degree necessary to make an informed judgment, he may, in appropriate circumstances, communicate to the auditor his view that an unfavorable outcome is "probable" or remote," applying the above meanings. No inference should be drawn from the absence of such a judgment, that the client will not prevail."

The lawyer cannot evaluate the case until discovery is complete and even then, the ABA Statement provides that a lawyer should normally refrain from expressing any judgement as to the client's liability in a case or the potential damages. The lawyer should communicate these limitations to the auditor. For example:

"Until such time as discovery is complete and the reports of medical and economic experts have been evaluated, we are not able to develop a position for the city to assert in mediation. The city will continue to vigorously defend its interests in the case."

IS THE AUDIT LETTER PROTECTED AGAINST DISCLOSURE BY THE ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT PRIVILEGE?

Courts at the federal level are split on whether information sent from an entity's attorneys to its auditors is protected against disclosure by the attorney-client privilege or attorney work product doctrine, or both. The courts in the Ninth Circuit have fallen on the side of regarding these kinds of disclosures as protected by the work product doctrine and the common interest doctrine.

In California the courts have affirmed the protection of the audit letter from discovery on the basis of the attorney work product privilege.

Federal Cases.

In *SEC v. Roberts*, the Securities and Exchange Commission (SEC) brought an action against a company officer, Kent Roberts, for various securities laws violations. *Roberts*, 254 F.R.D. 371 (N.D. Cal. 2008). The company had hired outside attorneys to conduct an internal investigation concerning these violations. The attorneys shared their findings obtained from interviews with company employees and Board of Directors members with the company's outside auditors, among others. Mr. Roberts filed a motion to compel production of written notes held by the attorneys that were given to the auditors.

The court found that the attorneys did not waive any attorney-client or work product privileges by disclosing the information to the company's auditors. While acknowledging the split in authority on whether revealing such information to the auditors waived attorney-client privilege and the work product doctrine, the court held that the disclosure of the information to the auditors was protected under the common interest doctrine. The common interest doctrine creates an exception to the rule on waiver of work product protection from disclosure by establishing that privileged information disclosed to a non-party sharing a common interest in litigation remains protected. The court stated that protecting information disclosed to auditors furthers the strong public policy of encouraging critical self-policing by corporations. Therefore, the court held that the attorneys' opinions on interviews and conclusions about the investigation that were sent to the company's auditors were protected from disclosure.

In *S.E.C. v. Berry*, a case with similar facts to *Roberts*, the court upheld the *Roberts* court's reasoning regarding the need to protect information disclosed to auditors and found the information attorneys disclosed to a company's auditor was protected by the work product doctrine. *Berry*, No. C07-04431 RMW HRL, 2011 WL 825742 (N.D. Cal. Mar. 7, 2011).

Although outside of the Ninth Circuit, see *United States v. Adlman*, 134 F.3rd 1194 (2d Cir. 1998) holding that the audit letter was protected by the federal work product privilege. The court held:

“[A] document created because of anticipated litigation, which tends to reveal mental impressions, conclusions, opinions or theories concerning the litigation, does not lose work-product protection merely because it is intended to assist in the making of a business decision influenced by the likely outcome of the anticipated litigation. Where a document was created because of anticipated litigation, and

would not have been prepared in substantially similar form but for the prospect of that litigation, it falls within [Federal Rule of Civil Procedure] Rule 26(b)(3).”

The Court went on to state that:

“[T]he policies underlying the work-product doctrine suggest strongly that work-product protection should not be denied to a document that analyzes expected litigation merely because it is prepared to assist in a business decision.” *id.* at 1199.

“A business entity prepares financial statements to assist its executives, stockholders, prospective investors, business partners, and others in evaluating future courses of action. Financial Statements include reserves for projected litigation. The company’s independent auditor requests a memorandum prepared by the company’s attorneys estimating the likelihood of success in litigation and an accompanying analysis of the company’s legal strategies and options to assist it in estimating what should be reserved for litigation losses.” *id.* at 1200.

California Cases.

In California, the attorney-client privilege is presumed for communications in the course of the professional relationship and the burden is on the party seeking disclosure to prove otherwise. Evidence Code § 917(a); *Costco Wholesale Corp. v. Sup.Ct.* (2009) 47 Cal. 4th 725, 733. Communications made both in furtherance of the attorney-client relationship and for a purpose independent of the relationship are privileged only if the dominant purpose is to further objectives of the attorney-client relationship. *Id.* at 735.

The federal work product doctrine is more limited than California’s. Its protection extends only to documents prepared in anticipation of litigation or for trial. In California, however, attorney work product protection is not limited to writings created by a lawyer in anticipation of a lawsuit. It also applies to writings prepared by an attorney while acting in a non-litigation capacity.” *Laguna Beach Cnty. Water Dist. v. Superior Ct.* (2004) 124 Cal. App. 4th 1453, 1461, *citing County of Los Angeles v. Superior Court* (2000) 82 Cal. App. 4th 819, 833. Additionally, California courts have recognized that the purpose of the work product doctrine is to protect information against opposing parties, rather than against all others outside a particular confidential relationship, in order to encourage effective trial preparation. *BP Alaska Exploration, Inc. v. Superior Court* (1988) 199 Cal.App.3d 1240, 1256; *see also* Code Civ. Proc., § 2018, subd. (a).

Therefore, work product protection is not waived except by a disclosure wholly inconsistent with the purpose of the privilege, which is to safeguard the attorney’s work product and trial preparation. *OXY Resources California v. Superior Court* (2004) 115 Cal.App.4th 874, 891.

In *Laguna Beach County Water Dist. v. Superior Court* (2004) 124 Cal. App. 4th 1453, 1461, a homeowner involved in legal action against a water district, served a subpoena on the water district’s auditor, among others, requesting documents relating to the water district’s potential liability arising from the construction of a dam. The water district asserted that the responses from the water district’s attorney to audit inquiries from the district’s auditor were documents protected by the work product privilege and therefore not discoverable. The court agreed with the water

8-8-22

district. It held that the water district attorney's written responses to inquiries by the auditor for the water district, relating to the financial effect of pending or threatened litigation against the district, were protected by the work product privilege. Therefore, the responses were not discoverable in the action by the homeowner against water district, where the attorney expressly identified documents to the auditor as "attorney work product communication," and there was no evidence that the attorney knew or suspected that the auditor would disclose the communications or that the auditor in fact did so.

ATTACHMENT A**Sample Form of Letter of Audit Inquiry from ABA Statement Commentary:**

[Name and Address of Law Firm]

Dear ____:

In connection with an examination of the consolidated financial statements of *[insert name of client]* (the "Company") and its subsidiaries at *[insert balance sheet date]* and for the *[insert fiscal period under audit]* then ended, our auditors, *[insert name and address of accounting firm]*, have asked that we request you to furnish them with information concerning certain contingencies involving matters with respect to which you have been engaged and to which you have devoted substantive attention on behalf of the Company and/or any of its subsidiaries. (For your convenience, a list of such subsidiaries is attached.) This request is limited to contingencies which *[insert standard of materiality to be used]* and they therefore should be considered in connection with our audit.

Pending or Threatened Litigation (excluding Unasserted Claims)

Please furnish to our auditors details relating to all matters of pending or threatened litigation your firm is handling on our behalf, which meet the standard of materiality stated above, including (1) a description of the nature of each matter, (2) the progress of each matter to date, (3) how the Company has responded or intends to respond (for example, to contest the case vigorously or to seek an out-of-court settlement), and (4) an evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss. Your response should include matters your firm was handling at *[insert balance sheet date]* as well as new engagements undertaken during the period from that date to the date of your response.

[If one or more unasserted possible claims or assessments are to be listed in the inquiry letter, include the following paragraph. If not, the following paragraph (and caption heading) should be omitted for the reason that the lawyer should be apprised *only* that management has advised the auditor that management has disclosed to the auditor all unasserted possible claims that the lawyer has advised are probable of assertion and must be disclosed (as *specified in* Financial Accounting Standards 5 [now codified as Financial Accounting Services Board Accounting Standards Codification Subtopic 450-20, Contingencies--Loss Contingencies].

Unasserted Claims or Assessments

We have informed our auditors that the following unasserted possible claims or assessments, for which you have been engaged and to which you have devoted substantive attention on our behalf in the form of legal consultation or representation, are considered by management to be probable of assertion and which, if asserted, would have at least a reasonable possibility of an unfavorable outcome: *[insert information as appropriate; ordinarily, managements information would include: (1) the nature of the matter, (2) how management intends to respond if the claim is asserted, and (3) an evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss]*. Please furnish to our auditors such

explanation, if any, that you consider necessary to supplement the foregoing information including an explanation of those matters as to which your views may differ from those stated.

We understand that whenever, in the course of performing legal services for us with respect to a matter recognized to involve an unasserted possible claim or assessment which may call for financial statement disclosure, if you have formed a professional conclusion that we must disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to us, you will so advise us and will consult with us concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5 [now codified as Financial Accounting Services Board Accounting Standards Codification Subtopic 450-20, Contingencies--Loss Contingencies]. Please specifically confirm to our auditors that our understanding is correct.

Please specifically identify the nature of and reasons for any limitation on your response.

[The auditor may request the client to inquire about additional specific matters; for example, unpaid or unbilled charges or specified information on certain contractually assumed obligations of the Company, such as guarantees of indebtedness of others, for which the addressee of the letter of audit inquiry has been engaged and to which such addressee has devoted substantive attention on the client's behalf in the form of legal consultation or representation.]

[The letter may also state: “We have represented to our auditors that there have been disclosed by management to them all unasserted possible claims that you have advised are probable of assertion and must be disclosed in accordance with Statement of Financial Accounting Standards No. 5 [now codified as Financial Accounting Services Board Accounting Standards Codification Subtopic 450-20, Contingencies--Loss Contingencies] in the financial statements currently under examination.” [or] “We have represented to our auditors that there are no unasserted possible claims that you have advised are probable of assertion and must be disclosed in accordance with Statement of Financial Accounting Standards No. 5 [now codified as Financial Accounting Services Board Accounting Standards Codification Subtopic 450-20, Contingencies--Loss Contingencies] in the financial statements currently under examination.”]

ATTACHMENT B

Sample Form of Audit Letter from Outside Counsel to Auditor

ATTORNEY-CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT PRIVILEGE

CONFIDENTIAL
This material is subject to the attorney-client privilege and/or attorney work product protection, or otherwise is privileged or confidential. Do not disclose the contents hereof. Do not file with publicly-accessible records.

[Date of letter]

VIA ELECTRONIC MAIL & U. S. MAIL

[Name of Auditor]
[Address, etc.]

Re: City of _____ - 2022 Audit Letter

Ladies and Gentlemen:

By letter dated _____, signed by _____, [title] _____, we have been requested by the City of _____ (“City”) to provide you with certain information regarding the City in connection with your regular examination of the accounts of the City as of [date in their request - i.e., June 30, 20__].

In addition to the foregoing, we understand that a number of claims have been filed with the City. The timely submission of such a claim is a prerequisite to the subsequent filing of a lawsuit; however, some claims are honored, abandoned or settled and do not result in litigation. Although copies of the claims may be sent to us for our files, we are generally not asked to give substantive attention to these matters unless and until they advance to litigation. We therefore are unable to discuss any such claims; a full list of all claims filed with the City can be obtained from the City Clerk.

Subject to the foregoing and to the last paragraph of this letter, we advise you that as of [same date as first paragraph], and the date set forth below, we have not been engaged to give substantive attention to, or represent the City in connection with material loss contingencies (that is, as defined in the City’s letter, involving more than \$_____ individually or in the aggregate) coming within the scope of clause (a) or clause (c) of Paragraph 5 of the ABA Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information, December 1975, except as follows:

- 1. [Case name], [court name and case number].

[Information about the case.]

* * * *

8-8-22

As of [same date as above], the City was indebted to us for previously billed fees and costs in the sum of [_____] and unbilled fees and costs in the sum of [_____].

Except as otherwise noted, the information contained herein is current as of [date the letter was started], the date on which the City of _____ requested that we commence our internal review procedures for purposes of preparing this response. We disclaim any undertaking to advise you of changes which thereafter may be brought to our attention.

It is our understanding that, by making the requests stated in its letter to us, the City does not intend to waive the attorney-client privilege with respect to any information that the City has furnished to us. Moreover, our response should not be construed in any way to constitute a waiver of the protection of the attorney-work product privilege with respect to any of our files involving the City.

Our response is solely for the auditor's information in connection with auditor's audit of the financial condition of the city, and its related entities, and is not to be quoted in whole or in part or otherwise referred to in any financial statements of the city, and its related entities, or related documents, nor is it to be filed with any governmental agency or other person, without our prior written consent.

This response is limited by, and in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, December 1975 (the "Statement"); without limiting the generality of the foregoing, the limitations set forth in such Statement on the scope and use of this response (Paragraphs 2 and 7) are specifically incorporated herein by reference, and any description herein of any "loss contingencies" is qualified in its entirety by Paragraph 5 of the Statement and the accompanying Commentary (which is an integral part of the Statement). Consistent with the last sentence of Paragraph 6 of the ABA Statement of Policy and pursuant to the City's request, this will confirm as correct the City's understanding as set forth in its audit inquiry letter to us that whenever, in the course of performing legal services for the City with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, we have formed a professional conclusion that the City must disclose or consider disclosure concerning such possible claim or assessment, we, as a matter of professional responsibility to the City, will so advise the City and will consult with the City concerning the question of such disclosure and the applicable requirements of Financial Accounting Services Board Accounting Standards Codification Subtopic 450-20, Contingencies--Loss Contingencies" ("ASC 450"), formerly known as Financial Accounting Standards No. 5.

Very truly yours,

[name of lawyer]

cc: City Manager
[name of person who signed the audit letter request sent to lawyer]

ATTACHMENT C

Sample Form of Audit Letter from Inside General Counsel to Auditor

[Name and Address of
Accounting Firm]

Re: [Name of Company] [and Subsidiaries]

Dear Sirs:

As General Counsel* of *[insert name of client]* [(the “Company”)] [(together with its subsidiaries, the “Company”)], I advise you as follows in connection with your examination of the accounts of the Company as at *[insert fiscal year-end]*.

I call your attention to the fact that as General Counsel* for the Company I have general supervision of the Company's legal affairs. *[If the general legal supervisory responsibilities of the person signing the letter are limited, set forth here a clear description of those legal matters over which such person exercises general supervision, indicating exceptions to such supervision and situations where primary reliance should be placed on other sources.]* In such capacity, I have reviewed litigation and claims threatened or asserted involving the Company and have consulted with outside legal counsel with respect thereto where I have deemed appropriate.

Subject to the foregoing and to the last paragraph of this letter, I advise you that since *[insert date of beginning of fiscal period under audit]* neither I, nor any of the lawyers over whom I exercise general legal supervision, have given substantive attention to, or represented the Company in connection with, [material] loss contingencies coming within the scope of clause (a) of Paragraph 5 of the Statement of Policy referred to in the last paragraph of this letter, except as follows:

[Describe litigation and claims which fit the foregoing criteria.]

[If information concerning specified unasserted possible claims or assessments and/or contractually assumed obligations is to be supplied:] With respect to matters which have been specifically identified as contemplated by clauses (b) or (c) of Paragraph 5 of the ABA Statement of Policy, I advise you, subject to the last paragraph of this letter, as follows:

[Insert information as appropriate]

The information set forth herein is [as of the date of this letter] [as of *[insert date]*], the date on which we commenced our internal review procedures for purposes of preparing this response], except as otherwise noted, and I disclaim any undertaking to advise you of changes which thereafter may be brought to my attention or to the attention of the lawyers over whom I exercise general legal supervision.

This response is limited by, and in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975); without

limiting the generality of the foregoing, the limitations set forth in such Statement on the scope and use of this response (Paragraphs 2 and 7) are specifically incorporated herein by reference, and any description herein of any “loss contingencies” is qualified in its entirety by Paragraph 5 of the Statement and the accompanying Commentary (which is an integral part of the Statement). Consistent with the last sentence of Paragraph 6 of the ABA Statement of Policy, this will confirm as correct the Company's understanding that whenever, in the course of performing legal services for the Company with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, I have formed a professional conclusion that the Company must disclose or consider disclosure concerning such possible claim or assessment, I, as a matter of professional responsibility to the Company, will so advise the Company and will consult with the Company concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5. [Describe any other or additional limitation as indicated by Paragraph 4 of the Statement.]

Very truly yours,

*As contemplated by Paragraph 8 of this Statement of Policy, this sentence is intended to be the subject of incorporation by reference as therein provided.

*Under FAS 5, when there has been no manifestation by a potential claimant of an awareness of a possible claim or assessment, disclosure of an unasserted possible claim is required only if the enterprise concludes that (i) it is probable that a claim will be asserted, (ii) there is a reasonable possibility, if the claim is in fact asserted, that the outcome will be unfavorable, and (iii) the liability resulting from such unfavorable outcome would be material to its financial condition.

*As contemplated by Paragraph 8 of this Statement of Policy, this sentence is intended to be the subject of incorporation by reference as therein provided.