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Outside attorneys fight city's legal battles for free Mayor enlists help to battle clubs, companies

By MATT STILES Copyright 2007 Houston Chronicle
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LEGAL FREEBIES

Mayor Bill White has persuaded several top Houston lawyers in recent years to help the city pro bono.

- **Smoking ban:** Kathy Patrick of Gibbs & Bruns is defending the revised ordinance, which bans smoking in most public places starting next month, from a recent federal court challenge.
- **Trash:** Jim Moriarty of Moriarty & Associates got a one-time city contractor, Republic Waste Services, to pay for an audit and \$2.5 million settlement in 2006 after allegations that some of its employees were overbilling the city.
- **Revenue cap:** Scott Atlas of Weil, Gotshal & Manges has defended a lawsuit over a ballot measure, passed by voters in 2004, that capped city revenues. The case is on appeal.
- **Environment:** David Berg of Berg & Androphy negotiated a deal with Texas Petrochemicals. The company agreed to reduce carcinogenic emissions and upgrade its facilities.
- **Coal plants:** Stephen Susman of Susman Godfrey prepared an administrative challenge on behalf of Houston and a coalition of other Texas cities that opposed a plan to build numerous new coal-fired power plants.
- **Nuisance nightclubs:** Allan Van Fleet of Greenberg Traurig represented the city in a lawsuit seeking to close down three clubs on Richmond near South Gessner that city officials said were magnets for crime.
- **Illegal signs:** Lance Lubell of Heard, Robins, Cloud & Lubell filed a lawsuit against a sign company that installed billboards in violation of a city ordinance.

charges a significantly reduced rate.

In another example, the city has a \$125,000 contract with the Baker Botts law firm to defend the Safe Clear towing program. The outside attorney on that case, Daryl Bristow, also offers a discount to the city.

If the smoking suit were to go to trial and the legal services weren't free, Patrick estimates that the city might have to pay as much as \$250,000.

The city also gets free legal services from the law firms of Baker Botts, Fulbright & Jaworski and Vinson & Elkins, all of which donate young associates as Municipal Courts prosecutors. That arrangement saves another \$1 million annually, Michel said.

This symbiotic arrangement gives the city free labor for its massive misdemeanor docket and affords the lawyers in-court training they typically wouldn't receive for years after passing the bar.

Most of the firms offering pro bono work, including Gibbs & Bruns, have no other business with the city.

Often, White calls on lawyers he knows care deeply about certain issues.

David Berg, a local trial lawyer with a passion for environmental protection, represented the city in its recent fight with

When the city has legal needs, Mayor Bill White sometimes gets the best lawyers in town — for free.

That was the case this week when, facing a recent federal court challenge to the city's smoking ban, White persuaded the respected law firm of Gibbs & Bruns to represent the city pro bono.

It wasn't the first time. The mayor, a former civil litigator, has recruited some of Houston's most skilled — and expensive — lawyers to fight the city's legal battles. White isn't the only Houston mayor to ask lawyers for favors, but he's clearly taken the practice to a new level.

In recent years, he has persuaded top firms to take on chemical companies, coal-fired power plants and nuisance nightclubs. The lawyers say they do it for several reasons: interest in the issues, civic responsibility and their relationships with White.

"I think he's got people at half the law firms in town doing it. I mean, it's hysterical," said Jim Moriarty, a local lawyer who has taken on several high-profile projects in recent years at no charge, including negotiating a \$2.5 million settlement with a trash-hauling contractor accused of overbilling the city.

"You know, I laugh when he calls, because I know it's just one more job I have to do," Moriarty said in jest, adding that being asked to do the work is an honor.

Often reserved for the indigent or condemned, pro bono work is a common ethic in the legal trade. But it's not typically associated with the city, which has a nearly \$1.9 billion operating budget and a legal department of roughly 80 lawyers.

Less than a dozen of them are litigators, however, so the city often hires outside lawyers with expertise and skill that municipal workers often can't match.

City Attorney Arturo Michel estimates conservatively that the city has saved at least \$1.3 million by getting some of those outsiders to donate their time.

"Their hourly rates are so high, that it would be difficult for the city to retain them," White said. "I tell lawyers that the city has budgets, and we're tight with money, and that we can't pay like some private clients."

One of those lawyers who accepted White's request was Kathy Patrick, a Harvard-trained litigator with Gibbs & Bruns who agreed to defend the city's ban on smoking in public places, which takes effect next month.

"This is such an important public health issue, particularly for employees who work in these facilities who don't have a choice about whether to be exposed to smoke," said Patrick, who met White in 1984 when she clerked at his former law firm, Susman Godfrey. "It's always nice to be on the side of what's right, and in the public interest, and so we were happy to do it."

Fighting such challenges to city ordinances can be pricey.

The city has spent more than \$1 million, for example, defending its sexually oriented businesses law in federal court, despite the fact that the outside lawyer handling that decade-old case, Pat Zummo,



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Texas Petrochemicals.

Berg, who didn't charge hourly rates for his time, got the company to cut its production of 1,3-butadiene, a carcinogenic chemical used to make rubber.

"I don't think there's any question that Houston is a huge contributor to global warming and the pollution that affects our world. That's important to me," said Berg, whose expenses were paid by the city.

While playing on the lawyers' interests helps, some say White is effective at tapping their sense of civic duty.

"What's unusual is that we're getting free services," Michel said. "I think that's largely due to the mayor, not only because of personal relationships but because of the way he talks to people about how these issues are important to the city."

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