

At NTTA, enormous changes proposed for how it uses outside law firms

By Michael Lindenberg/Reporter

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There was more going on at NTTA Wednesday than the board's approval of the ethics policy we wrote about for [this morning's paper](#).

For one thing it was the first meeting for Matrice Ellis Kirk, the business executive and former [DART](#) budget director, who was appointed to join George Quesada as Dallas County's appointees on the board. (Kirk, wife of former Dallas Mayor [Ron Kirk](#), is at right with chairman Ken Barr during yesterday's swearing in.)



She is the first African-American woman to serve on the board and joins Jane Willard of Collin County as the two women who serve. (**Correction:** Sometimes your fingers move faster than your brain. Obviously, she is the first African-American woman on the board, not first African-American as I originally wrote. Alan Sims is the most recent African-American board member. At the time he left the board, in 2010, he was the only minority serving and the second longest-serving member then on the board. ML)

Other issues at play yesterday included something I mentioned but probably too briefly in this morning's story: The decision to begin procurement of a contractor to serve as NTTA's major maintenance provider.

Currently that position is held by Jacobs Engineering, the same firm that built the approximately \$200 million State Highway 121 / U.S. 75 interchange in [McKinney](#). Jacobs billed more than \$10 million in 2009 as part of the maintenance contract, and NTTA has estimated that the contract would be worth more than \$35 million between 2012 and 2016.

This time, after the staff makes a recommendation for which firm should be hired, there will be no contact between board members and the firms. [Indeed](#), the new rules, in a direct rebuke for how things

have worked in the recent past, impose a "cone of silence" between board members and contractors throughout the entire process beginning yesterday.

As with most things, the devil will be in the details -- and in how board members chooses to police their own behavior. Technically, Jacobs could still have lunch with a board member to talk about other issues. But as the NTTA director of procurement noted in the meeting yesterday, that might be something the board members would rather avoid.

In addition, general counsel Thomas Bamonte briefed the board yesterday on plans to advertise for law firms to work for NTTA. The proposal he laid out appeared to be moving toward enormous changes. To understand what they are, let me give you a bit of background:

How things worked until recently: Back in 2005, NTTA advertised for new firms to come in and compete with Locke Lord Bissell & Liddell for the role of outside general counsel.

While other firms bid for the work, no other finalists were interviewed and Locke Lord, which has been the firm or its predecessor agency's law firm since 1954, was given a new five-year contract. That contract required that all work done outside of NTTA's legal offices -- which for much of the past seven years had one or fewer layers -- be done by Locke Lord or by a subcontracting law firm of Locke Lord's choice. (Note: That should say *almost* all work. NTTA retains separate bond counsel, for instance.)

So it's a big job, made exponentially bigger in recent years by very weak executive leadership and either no or very weak in-house legal counsel.

It was also a big time of change for NTTA, and Locke Lord has billed tens of millions of dollars since 2005.

How things work right now: Behind the scenes NTTA board members and previous staff have been fighting over legal services for a couple years now. It's not been pretty. One general counsel was forced out, and the executive director who hired him was ousted, too.

But eventually, the board settled on what they called the legal services protocol. It imposed boundaries on what the authority's general counsel can do, and what work would be reserved for attorney Frank Stevenson, a former Dallas Bar Association president and the lead partner on the NTTA account at Locke Lord. He has worked on NTTA matters for his entire career.

Stevenson was named "board counsel" and works directly for the board. The general counsel at NTTA was to be in charge of reviewing his bills and handling the lower-level work that was not, in the words of some of the board members, "bet the farm" kind of legal work.

The audit released in October by Marsal and Alvarez suggested that the protocol division of labor was too vague. In particular, it said leaving the major work for Stevenson could easily turn into a blank check. They recommended that the in-house counsel be put more firmly in charge.

How things might work in the future: Since Bamonte was hired last year, things have begun to change. Barr and other leaders who have long supported Stevenson through the internal fights over legal services have said that Bamonte is quickly winning their confidence to handle more and more matters in house.

He has been made, for instance, the chief ethics officers for NTTA and it will be him -- and not Stevenson -- who helps decide how ethical issues among the board should be handled.

But the bigger changes may be in what is coming as part of the procurement process outlined Wednesday for legal service.

NTTA would divide into seven the categories of work available to outside lawyers. One or more firms would be selected for each category to be part of a pool of available firms from which Bamonte or the board could choose each time a legal task presented itself.

Importantly, and this is a big change, NTTA would only hire an outside firm if it actually needed the expertise for the work, or if the in-house legal department couldn't do it.

It's hard to overstate how big a change this new arrangement would mean for NTTA, and it doesn't come without some risks.

Locke Lord has done all of NTTA's legal work in recent years. And its attorneys have not only been familiar with NTTA, they have in many real ways, created the agency as it now exists. Stevenson, to cite the most obvious example, has personal knowledge of nearly every big decision the agency has ever made.

NTTA has paid huge bills to buy that kind of expertise and loyalty. It now wants to save money, and spread the work around geographically. It also hopes to attract more smaller firms.

But one caution is worth mentioning: Bamonte laid out his goals yesterday and noted that the first goal was to ensure excellence in the legal work done on behalf of the agency. Another goal was to save money, and a third was to ensure that more firms get to share in NTTA spending.

Those goals aren't necessarily compatible.

But as Bamonte's influence grows at NTTA it's easy to see that by doing more work in-house NTTA will spend less on outside law firms. What that means in terms of its quality and -- what matters, when the issue is law -- the outcomes it achieves in court, in the Legislature and elsewhere remains to be seen.