

## [Public Entity is Entitled to Hire Private Law Firm in Tax Assessment Proceedings](#)

Posted on January 19, 2010 by [David J. McMahon](#)

In [Priceline.com Inc. v. City of Anaheim](#) the [California Court of Appeals, Fourth District](#) issued a decision interpreting the so called Clancy doctrine.

In the [California Supreme Court](#)'s ruling in *Clancy v. Superior Court*, (1985) 39 Cal. 3d 740, 746-51 the Court provided a framework for, when, and if, a public entity has the authority to hire an attorney on a contingent fee basis to try a civil case.

The Priceline litigation commenced when a private law firm working for the City of Anaheim informed Priceline.com Inc. that it was liable for failing to remit a local hotel tax. The tax was allegedly due for Priceline's hotel room reservation service.

Priceline responded to outside counsel, and demanded to know whether the lawyer was working on a contingent fee basis. Anaheim answered in the affirmative, but stated that the private firm was acting as its co-counsel.

Under the *Clancy* doctrine outside lawyers are allowed to assist government lawyers as co-counsel in "ordinary" civil litigation. Priceline then sought to compel Anaheim to litigate the matter without the outside counsel's involvement, by petitioning for a writ of mandate. The trial court denied the petition and Priceline appealed.

The court of appeal affirmed, noting that a under *Clancy*, a government may hire an attorney on a contingent fee to try a civil case. However, some types of cases (only vaguely described in *Clancy*) require "a balancing of interests" and "a delicate weighing of values." Under *Clancy*, it is clear that the use of outside counsel as the government's sole litigator would have been prohibited.

In *Priceline*, the case was a tax assessment proceeding and for that reason the Court of Appeal concluded that it was an administrative action that did not require use of the balancing test or weighing of issues.

As the disputed matter did not fall inside the barred class, the court concluded that Anaheim was not prohibited from hiring outside counsel on a contingent fee to try this case. The trial court was correct in denying Priceline's petition.