

July 11, 2006

Santa Barbara County Civil Grand Jury
Attention: Foreman
1100 Anacapa Street
Santa Barbara CA 93101

Dear Sir:

The following is our response to the Santa Barbara County Civil Grand Jury report titled 'Legal Services in Santa Barbara'. Our response represents the opinion of our Board of Directors, following a discussion during our Board meeting of July 6, 2006.

On page 16 of the Report, you allude to the exorbitant costs of our defense of a lawsuit brought by the Libertarian Party of Santa Barbara. They had alleged us guilty of a violation of the Brown Act. The lawsuit, and the attendant costs, could have been forestalled had the Libertarian Party been required to come before our Board in an attempt to find a mutually acceptable resolution, also known as a cure. Allowing such lawsuits to proceed without having to address our Board does not seem to follow the spirit of the law.

Sincerely,

Jeff Yolles
Operations Manager

Dale Summersille
General Manager

September 5, 2006

The Honorable Judge Rodney Melville
Superior Court
312-M East Cook Street
Santa Maria, California 93455-5165

Santa Barbara County Civil Grand Jury
Attention: Foreman
1100 Anacapa Street
Santa Barbara, California 93101

Reference: Response by the Isla Vista Recreation and Parks District to the Santa
Barbara County Civil Grand Jury Report dated May 16, 2006

Honorable Judge Melville and Grand Jury Foreman:

We are in receipt of the May 16, 2006 report of the Santa Barbara County Civil Grand Jury entitled "Legal Services in Santa Barbara, Very High Prices for Comprehensive Representation." This letter is prepared pursuant to California Penal Code Section 933.05 (b) to provide a response to the findings and recommendations contained in the report. This letter was approved for transmission to the Grand Jury at the Board Meeting of the Isla Vista Recreation and Park District on September 7, 2006 and supersedes the letter previously sent to the Grand Jury dated August 15, 2006.

At the outset, we acknowledge that our response is provided beyond the specified deadline and request your understanding as our District has been undergoing staff transitions over the last few months which, along with other District business, precluded an earlier and more detailed response to the report.

Set forth below are the findings and recommendation from the report along with our responses to each.

Finding 1

Legal services for municipalities and districts are a vital necessity that provides advice, guidance, counsel and defense. Municipalities and districts fulfill their legal service requirements by various methods suitable to each municipality or district's

unique needs and circumstances. Budgeting procedures for legal services often underestimate actual expenses, especially when the municipality or district is involved in litigation. Often budgeting seems to be a mere guess or a deliberate understatement of anticipated or known foreseeable costs.

Response to Finding 1

The District partially agrees with the finding. The District does not agree with the finding that “budgeting seems to be a mere guess or a deliberate understatement of anticipated or known foreseeable costs.” The District strives to accurately budget for legal services at the beginning of each fiscal year. The District does not “guess” nor does it deliberately underestimate anticipated or known foreseeable litigation costs. As noted in the report, it is not always possible to anticipate or budget for litigation expenses that may arise unexpectedly, especially if the litigation services are in conjunction with providing a defense to the District.

Finding 2

Legal services are very costly. Litigation is even more costly. Litigation is often an open checkbook for the municipality or district, which has little or no ability to control the costs’ thrust.

Response to Finding 2

The District partially agrees with the finding. The District does not agree with the finding that “litigation is often an open checkbook for the municipality or district, which has little or no ability to control the costs’ thrust.”

The District agrees that legal services and litigation services are costly throughout the state, not just in Santa Barbara County. Notwithstanding, such services are a necessary expense of District. The District, however, does not agree that litigation is an open checkbook for the District to spend money. The District strives to keep litigation costs at a minimum but often the cost of litigation is not within the District’s control. For example, the report on page 16 alludes to the exorbitant costs of the District’s defense of a lawsuit brought by the Libertarian Party of Santa Barbara. The lawsuit, and the attendant costs, could have been averted had the plaintiff been required to provide the District notice and an opportunity to cure the alleged violation. Similarly, the District was recently sued by another member of the Libertarian Party, Michael Lamboley alleging that the District Board did not have the ability to hold closed sessions during its meetings to consider the selection of a new District General Counsel. Again, the plaintiff sought to avoid the prerequisite to the filing of a lawsuit for violation of the Brown Act that requires notice and an opportunity to the District to cure the alleged violation. The District believes that allowing such lawsuits to proceed

without providing notice and an opportunity to the District to cure the alleged violation is not within the spirit of the Brown Act and a loophole in the legislation. Nevertheless, the District and Plaintiff quickly settled this most recent lawsuit and neither the District nor its Boardmembers admitted any liability for the claims made by plaintiff. In fact, plaintiff dismissed its lawsuit against the District and the District signed a statement attached to the settlement agreement which acknowledges that closed session interviews are permitted under the Brown Act as one of the few exceptions to the State's open meeting laws.

Finding 3

Although confidential information contained in legal bills could be deleted or redacted, some municipalities and districts chose to submit bills with all information about services provided by attorneys omitted making it difficult to determine what services were provided to the government agency.

Response to Finding 3

The District has no basis to agree or disagree with the finding, since the District does not know which public entities deleted, redacted or omitted information from the bills for legal services. Notwithstanding, if the District's bills reveal confidential information protected by the attorney-client privilege that would disclose litigation strategy or otherwise harm the District, the District is within its legal authority to delete or redact such information. Otherwise, fees paid to outside counsel is a matter of public record.

Finding 4

The requirements of informed consent appear to be informally satisfied.

Response to Finding 4

It is unclear as to what this finding refers to, in particular that reference that the requirements appear to be "informally satisfied." Moreover, the District has no basis to agree or disagree with the finding on whether other entities comply with the requirement of informed consent.

Notwithstanding, the professional services agreement between the District and its General Counsel requires the General Counsel to comply with all applicable laws and professional rules and standards relating to any known conflict of interests and to notify the District of any known conflict of interest related to matters upon which the General Counsel is providing services to the District.

Finding 5

Retainers are often short, simple, summary agreements containing little detail defining the nature of the services, the purpose of the retainer or scope of services to be provided in sufficient detail to assure adequate accountability.

Response to Finding 5

The District disagrees with this finding as it relates to the District. The District's agreement with its General Counsel is comprehensive and specifically states the purpose of the agreement and lists the types of services that fall under "general attorney services" and "special services." In addition the agreement include provisions that benefit and serve to protect the district such as a conflict of interest clause, indemnification clause in favor of the District and insurance including professional liability coverage.

Finding 6

Retainers contain provisions that are unique to each municipality or district. Hours, rates, travel time and travel costs, disbursements, office costs, staff costs, research costs, professional liability insurance, costs and expenses on termination, ownership of documents and renewals are some of the issues relative to retainers that must be carefully negotiated.

Response to Finding 6

The District agrees with this finding. For example, the District does not reimburse its General Counsel for electronic legal research or normal overhead. Costs and expenses require an invoice and are limited to the terms set forth in the agreement. Also, the District General Manager must approve travel expenses in advance.

Finding 7

Budgets or caps are rarely used to control legal expenses.

Response to Finding 7

The District disagrees with this finding as it relates to the District. The District General Manager oversees legal expenses and works with its General Counsel to keep legal expenses within the budget. The District has delayed certain projects that involve the use of its General Counsel if the legal expenses are close to or have exceeded the budgeted amount for the fiscal year. As it relates to litigation, litigation by its nature is not amenable to fixed or capped fees. It is often difficult to anticipate

the costs of litigation due to influences outside the control of the District (such as the other party does not wish to settle, the other party engages in overbroad and burdensome discovery and tactics, etc.). Nevertheless, it is appropriate to use budgets as a means to control litigation expenses and ensure that the General Manager and District Board are aware of litigation expenses.

Finding 8

Counsels are selected on the basis of various objective criteria such as qualifications, competence, ability and expertise and on subjective criteria such as politics, confidence and trust.

Response to Finding 8

The District partially agrees with the finding. The District's selection of counsel has been based on their qualification, experience and professionalism.

Finding 9

Hiring is distinctly a function of the governing board and requests for proposals do not seem to be generally used. The lowest cost should not necessarily be the sole objective of legal services but routine repetitive work may justify a more cost conscious manner of obtaining legal services.

Response to Finding 9

The District has no basis to agree or disagree with the finding that requests for proposals do not seem to be generally used. The District agrees that the lowest cost should not necessarily be the sole objective of legal services but routine repetitive work may justify a more cost conscious manner of obtaining legal services. Moreover, as previously stated, retention of outside counsel should also be based on the attorney or law firm's qualifications, experience, expertise and professionalism.

Finding 10

Special services are required in connection with complex, difficult, time consuming and specialized areas of the law. The cost of special counsel may add substantially to the annual cost of legal services. Often the cost of outside counsel is not included in the annual general fund budget.

Response to Finding 10

The District agrees with this finding.

Finding 11

The level of audit and review of legal service bills varies. Some municipalities or districts closely review bills and services provided. Others rarely question the need, cost or amount of such bills.

Response to Finding 11

The District has no basis to agree or disagree with this finding; the District does not know which public entities review bills and services and which public entities do not. As it relates to the District, the District Manager and Bookkeeper carefully review the bills and time entries for legal services. In addition, the bills are reviewed to ensure compliance with the agreement between the District and its legal counsel.

Recommendation 1

Municipalities and districts should review and define the level of their legal service needs and seek counsel at a level to satisfy those needs. The level of needed legal services should be developed objectively with an understanding of the anticipated actual costs and include a realistic amount in the annual budget.

Response to Recommendation 1

This recommendation has already been implemented. The District in conjunction with its annual work plan strives to anticipate the actual cost of legal services and includes such cost in its budget.

Recommendation 2

Municipalities and districts should review, audit and control the number of hours for which services are claimed for billing purposes. Management personnel must be given authority to review and audit claims for legal services in the same manner as they review and audit other services provided to the municipality and district.

Response to Recommendation 2

This recommendation has already been implemented as the District reviews bills for legal services to ensure that the bills reflect work requested and the bills comply with

the agreement for legal services. If warranted, an audit can be conducted in the same manner as audits for other services provided to the District.

Recommendation 3

Municipalities and district should review the basic fees structure and give consideration to flat rate charges for routine or monthly services and define with precision additional services and the methods of authorizing additional services.

Response to Recommendation 3

The District will implement the recommendation and review its fee structure for General Counsel services within this fiscal year. The remainder of the recommendation has already been implemented, as the agreement for legal services with its General Counsel is specific as to what services are considered general services and what services are considered special services.

Recommendation 4

Municipalities and districts should use caps and budgets or other limitations to control costs in litigation where the municipality or district is named as a party.

Response to Recommendation 4

The District agrees with the recommendation that budgets or other limitations should be used to control costs in litigation. The District, however, does not agree that caps are a feasible or realistic method to control litigation. As noted in the report, "the length and difficulty of any litigation makes fixed fees difficult." (Report at page 26). Notwithstanding, the District will implement the recommendation as it relates to budgets and believes that it is appropriate to use budgets as a means to control litigation expenses and ensure that the General Manager and District Board are aware of litigation expenses.

Recommendation 5

Municipalities and districts should review the necessity for attendance by counsel at advisory board meetings.

Response to Recommendation 5

The District General Manager has already implemented this recommendation as the General Counsel attends District meetings or other meetings of the District only upon request.

Recommendation 6

Municipalities and districts should consider billing practices, minimum charges, minimum hours, carryover of unused monthly hours, multiple billing for in-office conferences and the services to be included in monthly minimum fees.

Response to Recommendation 6

This recommendation will not be implemented because it is not warranted. The agreement between the District and its General Counsel provides that fees for legal services are based on an hourly rate and not a retainer basis. If in the future the District retains counsel on a retainer basis, the District will consider implementing this recommendation.

Recommendation 7

Municipalities and districts should review disbursements such as electronic research, postage, shipping, telephone, travel time and travel expenses, expert witness costs, extraordinary discovery procedures, staff overtime costs, outdated charges such as word processing charges, prior approval provisions related to extraordinary costs and costs assumed by a municipality of district in the event of a dispute.

Response to Recommendation 7

This recommendation has already been implemented as the District reviews bills for legal services to ensure that the bills reflect work requested and the bills comply with the agreement for legal services. If warranted, an audit can be conducted in the same manner as audits for other services provided to the District.

Recommendation 8

Municipalities and districts should require proof of an agreed level of professional liability insurance.

Response to Recommendation 8

This recommendation has already been implemented as the agreement between the District and its General Counsel requires an agreed level of professional liability insurance.

Recommendation 9

Municipalities and districts should require disclosure of the names of current clients represented by the firm to be retained who may have potential conflicts with the municipality or district. Municipalities and districts should give consideration to limitations on its law firm's representation of other clients whose interests could foreseeably result in a conflict requiring disqualification of the municipality or district's law firm and provide a procedure to deal with the issue if it should arise.

Response to Recommendation 9

This recommendation has already been implemented as the agreement between the District and its General Counsel requires the General Counsel to comply with the California Rules of Professional Responsibility including notifying the District of any known conflict of interest related to matters upon which the General Counsel is providing services.

Recommendation 10

Retainers should provide for payment within a period longer than 30 days without penalty to permit full audit of services. In no event should the period within which payment is required to be made be less than the normal meeting cycle plus processing time of the governing board.

Response to Recommendation 10

The District agrees with the recommendation and the recommendation has already been implemented. The agreement between the District and its General Counsel provides flexibility for payment and requires that the District process and cause such billings to be paid promptly.

Recommendation 11

Municipalities and districts should require renewal retainers to be upon the complete agreement rather than the change of a rate sheet.

Response to Recommendation 11

This recommendation will not be implemented because it is not warranted. The District does not have a retainer agreement with its General Counsel. If in the future the District retains counsel on a retainer basis, the District will consider implementing this recommendation.

Recommendation 12

Municipalities and districts should use requests for proposals for retaining counsel to handle routine, repetitive matters.

Response to Recommendation 12

The District agrees with the recommendation and has implemented this recommendation.

Recommendation 13

Where legal service costs exceed 1% of the budget of the municipality or district, legal service costs should be monitored and evaluated to determine need and appropriateness.

Response to Recommendation 13

The District first notes that its budgeted amount for legal services (excluding the cost related to the Libertarian Party litigation) already exceeds 1% of the District's budget. The 1% threshold chosen by the Grand Jury may not be appropriate for all districts or municipalities as legal expenses includes not only routine matters but also any special projects the public entity may have for that particular fiscal year. In response to this recommendation, the District already implements this recommendation. The District continually monitors its legal expenses on a monthly basis.

Recommendation 14

In situations where informed consent is required, the rules related to informed consent should be strictly enforced and the basis upon which informed consent is given should be fully set forth in the minutes of the governing body.

Response to Recommendation 14

This recommendation has already been implemented as the agreement between the District and its General Counsel requires the General Counsel to comply with the California Rules of Professional Responsibility including notifying the District of any

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known conflict of interest related to matters upon which the General Counsel is providing services.

Recommendation 15

Bills and other records of charges made for legal services after deleting confidential information should be deemed to be public records open to public disclosure.

Response to Recommendation 15

This recommendation has already been implemented as the District complies with the Public Records Act, which recognizes that information or documents subject to attorney-client privilege are exempt from disclosure.

Thank you for preparing the report and providing the District with an opportunity to respond to the report.

If you have any questions, please do not hesitate to contact me or our new District General Manager, Dale Sumersille at (805) 968-2017.

Very truly yours,

Kelly Burns
Board President

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