

OFFICE OF THE CITY ATTORNEY

June 22, 2006

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

Mr. Ted Sten, Foreman
Santa Barbara County Civil Grand Jury
1100 Anacapa Street
Santa Barbara, California 93101

RE: 2005-2006 Santa Barbara County Civil Grand Jury
Report Entitled "Legal Services in Santa Barbara:
Very High Prices for Comprehensive Representation"

Dear Judge Melville and Mr. Sten:

Please accept this letter as the formal response of the City Attorney for the City of Lompoc to the above-referenced report dated May 16, 2006.

The City Attorney has been asked to respond to eleven Findings and fifteen Recommendations, and accordingly submits the information below.

I. FINDINGS

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, especially when the municipality or district is involved in litigation.

Respondent agrees with this portion of Finding 1.

The Honorable Rodney S. Melville
Mr. Ted Sten, Foreman
June 22, 2006
Page 2

Often budgeting seems to be a mere guess or a deliberate understatement of anticipated or known foreseeable costs.

Respondent disagrees with this Finding as to the City of Lompoc. The City's biennial budget precisely allocates funds, to the penny, to pay for the known and foreseeable costs of necessary legal services – i.e., salaries and benefits of in-house attorneys and paraprofessional staff, employees' health insurance premiums, retirement costs, office operations (postage, supplies, printing, copying, publications, software), utilities (telephone equipment and services, internet costs, repair and maintenance of communications equipment), professional training, mandatory memberships in the State Bar Association, travel, meals, and lodging for business trips, vehicle rentals, fax machine, printers, computers, office furniture, etc.

The final amount allocated to each account is determined after detailed scrutiny of the budget request by the City Attorney – a request which is itself based upon past financial data, known expenses, and anticipated costs. The City Administrator and the City's Management Services Director and their respective staffs then confer at length with the City Attorney to scrutinize the necessity and sufficiency of budget requests; mutually agreed amounts are subsequently recommended to the City Council for approval. The City's Budget is strictly administered, and the allocated sums are not exceeded absent the prior formal, public approval of the City Council (the Council has delegated authority to the City Administrator to approve budget transfer requests of less than \$10,000).

The amounts approved for the expenses of the City's Attorney's Office are set forth in Fund 10 (General), Program 10400 (City Attorney) of the City of Lompoc 2005-2006 Budget, specifically in Accounts numbered 51110 through 56115 and 73004 through 73072, among several others.

In addition to the City Attorney's Office allocations, the City's Budget contains Program 53320 (Professional Services---Legal). This Program contains accounts for 21 City departments and divisions that are expected to require legal services from outside vendors, based on historical data. The accounts in Program 53320 contain specific maximum amounts for specialized legal services for such offices as the Human Resources Division, the Community Development Department, the Water Division, the Wastewater Division, the Electric Division, and for the City itself – e.g., liability insurance and workers compensation costs. Although the exact amount of any future judgment against the City cannot be predicted, the amount of the City's self-insured retention under its liability insurance policies is a finite figure, and adequate funds are kept available to satisfy this deductible in cases when litigation cannot be avoided.

The City of Lompoc does not deliberately understate its legal services budget. Realistic amounts are budgeted, and expenditures thereafter are carefully controlled. It is not uncommon for the actual expenditures of the City Attorney's Office to be less than the budgeted amount, as in fiscal year 2004-2005.

The Honorable Rodney S. Melville
Mr. Ted Sten, Foreman
June 22, 2006
Page 3

Finding 2. Legal services are very costly. Litigation is even more costly.

Respondent agrees with this portion of Finding 2.

Litigation is often an open checkbook for the municipality or district, which has little or no ability to control the costs' thrust.

Respondent disagrees with this Finding as to the City of Lompoc. The City's management staff, as guided by the City Attorney's Office pursuant to the direction of the City Council, definitely does not respond to litigation with an open checkbook or a cavalier attitude toward the costs of litigation. The City, like other public entities, generally defends many more lawsuits than it initiates, and, as the defendant in any cause of action, the City does not have total control over the course of the pending litigation and the ultimate disposition of the case. However, it is not accurate to characterize this situation as an inability to control costs.

The City of Lompoc takes seriously its responsibility for management of public funds and contains litigation costs by every means available and practical. This process commences long before a plaintiff files suit. The City Attorney's Office keeps abreast of new legislation and developing judicial positions in key areas of municipal law and provides extensive advice and necessary formal training to the City's departments and divisions affected by such changes. Specific concerns and issues are addressed as they arise—legal staff consults with the City's staff involved in the matter, in order to render advice regarding pending issues, at a time when litigation might still be prevented or avoided. Other preventive measures include indemnification of the City by contractors for the negligent acts or willful wrongdoing of the contractor, subcontractors, and their respective employees and agents. The City also participates in a consortium of other public entities to obtain liability insurance at favorable rates. When tort claims are filed against the City, they are reviewed and investigated; if meritorious, the claims are negotiated and settled at a very early stage in the process.

Even after litigation is filed, runaway costs are not inevitable. Outside counsel are retained on a case-by-case basis, after approval by the City Council, and only when necessary for matters involving legal specialties, unusually complex or unfamiliar subject matter, or other compelling reasons. Whether the City is represented by in-house or outside counsel, all cases are subject to strategy conferences among key City staff prior to the first response by the City. A reasonable action plan is developed to guide the course of the litigation, and the plan is frequently reviewed and modified as facts and circumstances change. The conduct of the case is monitored closely by the City Attorney's Office. As the matter proceeds, the City Council is kept informed by oral or written status reports; Council direction is sought for key decisions during the litigation, e.g., in response to a settlement offer. The City also takes advantage of any opportunity for additional

The Honorable Rodney S. Melville
Mr. Ted Sten, Foreman
June 22, 2006
Page 4

cost efficiency, such as engaging counsel jointly with other public entities in matters where their respective interests do not conflict.

Finding 3. Although confidential information contained in legal bills could be deleted or redacted, some municipalities 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.

Respondent disagrees with this Finding as to the City of Lompoc: all documents requested of Lompoc were submitted without redactions.

Finding 4. The requirements of informed consent appear to be informally satisfied.

Respondent disagrees with this Finding as to City of Lompoc, inasmuch as Lompoc's practice is to resolve potential conflicts of interest on a case-by-case basis, as they may arise, with a meticulous examination of the facts of the matter so that appropriate action may be taken if necessary. The City has found this procedure to be satisfactory over many years, due to the small number of outside vendors of legal services used and the infrequency of referrals to outside litigators.

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.

As to the City of Lompoc, Respondent disagrees with this Finding. The City of Lompoc has drafted a basic retention agreement containing the provisions necessary to protect the City; the agreement then is customized with specific details for each vendor, to a degree adequate to determine what services the City is procuring and whether the vendor is satisfactorily supplying them in accordance with the retention agreement.

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.

Respondent agrees with this Finding.

Finding 7. Budgets or caps are rarely used to control legal expenses.

Respondent disagrees with this Finding as to the City of Lompoc. As described in more detail in the response for Finding 1, the City very carefully budgets for the costs of its legal services and strictly adheres to the established fiscal limitations.

Finding 8. Counsels are selected on the basis of various objective criteria such as qualifications, competence, ability and expertise . . .

As to the City of Lompoc, Respondent agrees with this part of the Finding.

... and on subjective criteria such as politics, . . .

As to the City of Lompoc, Respondent disagrees that politics is a selection factor in the City Council's choice of legal counsel.

. . . confidence, and trust.

Respondent agrees that confidence and trust probably are used as selection criteria. While evaluation of such elements necessarily must be subjective, the existence of confidence and trust forms the core of a successful attorney-client relationship. Respondent believes the attorney-client relationship is of such a nature that evaluation of confidence and trust, in addition to more objective criteria, is vitally necessary to the selection process. Respondent believes that evaluation by both potential client and applicant attorney of the existence of confidence and trust in the proposed relationship is a positive rather than negative factor.

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.

Respondent agrees with this Finding, although the City of Lompoc does competitively procure professional and paraprofessional services to the extent practical in appropriate cases and specialty areas. Inherent in the process is an accurate description of the services required, so that unnecessary services are not purchased. Such services are procured from available funds that have been budgeted for the purpose.

The Honorable Rodney S. Melville
Mr. Ted Sten, Foreman
June 22, 2006
Page 6

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 costs of legal services. Often the cost of outside counsel is not included in the annual general fund budget.

Respondent disagrees with this Finding as to the City of Lompoc, as set forth in more detail in the response to Finding 1.

Finding 11. The level of audit and review of legal service bills varies. Some municipalities or districts closely review bills and services provided. . . .

Respondent agrees with this Finding. All invoices for legal services (paraprofessional as well as professional) rendered to the City of Lompoc are carefully reviewed prior to payment, either by the City Attorney's Office or by both the City Attorney staff and the department heads of the offices or divisions directly receiving the invoiced services. Non-itemized invoices are rejected and returned to the vendor for correction and resubmittal. When services descriptions are unclear, unauthorized, or lacking support documentation, the vendor is contacted for an explanation, asked to supply any missing rationale or supporting documentation, and requested to correct any other invoice deficiencies. When invoice charges are deemed to be too high by the City's in-house attorney or department head reviewing the invoice, the invoice is not paid until the propriety of the charges has been established.

. . . Others rarely question the need, cost or amount of such bills.

As set forth above, Respondent disagrees with this Finding as to the City of Lompoc.

II. RECOMMENDATIONS

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.

This Recommendation has been in effect in the City of Lompoc for many years, as set forth more specifically in the response to Finding 9.

The Honorable Rodney S. Melville
Mr. Ted Sten, Foreman
June 22, 2006
Page 7

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.

This Recommendation has been in effect in the City of Lompoc for many years, as described in the response to Finding 11.

Recommendation 3. Municipalities and districts 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.

This Recommendation will be implemented, when appropriate, within ninety days.

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.

This Recommendation has been in effect in the City of Lompoc for many years, as set forth in more detail in the response to Finding 2.

Recommendation 5. Municipalities and districts should review the necessity for attendance by counsel at advisory board meetings.

This Recommendation has been followed in the City of Lompoc for many years. Although attendance by in-house counsel at the meetings of the City's twelve permanent advisory boards and commissions does not result in the City being charged for billable hours, only two attorneys comprise the City's full-time professional legal staff. In view of such limited staff resources, the necessity for an attorney to attend advisory body meetings is continually reviewed.

The Honorable Rodney S. Melville
Mr. Ted Sten, Foreman
June 22, 2006
Page 8

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.

This Recommendation is in effect in the City of Lompoc and is used when appropriate. Because of the full-time employment of two staff attorneys, however, the concept of minimum monthly fees for a specified number of hours of service generally has no bearing on the costs of Lompoc's legal services.

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 or district in the event of a dispute.

This Recommendation is in effect in Lompoc, as described in the response to Finding 11.

Recommendation 8. Municipalities and districts should require proof of an agreed level of professional liability insurance.

This Recommendation has been partially implemented in the City of Lompoc, and will be fully implemented as each retainer agreement expires.

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 interest 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.

As set forth in the Response to Finding 4, Respondent has implemented this Recommendation.

The Honorable Rodney S. Melville
Mr. Ted Sten, Foreman
June 22, 2006
Page 9

Recommendation 10. Retainers should provide for payment with a period longer than 30 days without penalty to permit full audit of services. In no event should the period within which pay [sic] is required to be made be less than the normal meeting cycle plus processing time of the governing board.

This Recommendation has been in effect for many years, and the City of Lompoc virtually never accrues penalties for late payment of invoices.

Recommendation 11. Municipalities and districts should require renewal retainers to be upon the complete agreement rather than the change of a rate sheet.

This Recommendation will be implemented as each legal services contract expires.

Recommendation 12. Municipalities and districts should use requests for proposals for retaining counsel to handle routine, repetitive matters.

Respondent has implemented this Recommendation, as noted in the response to Finding 9.

Recommendation 13. Where legal services exceed 1% of the budget of the municipality or district, legal service costs should be monitored and evaluated to determine need and appropriateness.

This Recommendation has been in effect in the City of Lompoc for many years, as borne out by the fact that the percentage of Lompoc's budget spent for legal services in 2004-2005 was only .0064, the best record of the seven cities ranked by the Grand Jury report on this subject. The budgeted amount for Lompoc's legal services for 2005-2006 is .0080% of the total City budget.

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.

The rules of conflict of interest are strictly enforced in Lompoc. However, this matter generally has not been included in the minutes of City Council meetings. This Recommendation will be implemented as the issue arises from time to time in the future.

The Honorable Rodney S. Melville
Mr. Ted Sten, Foreman
June 22, 2006
Page 10

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.

The disclosure of information transmitted between attorney and client is governed by the California Rules of Professional Conduct and the California Evidence Code. The City of Lompoc, acting through its City Council, is the holder of the attorney-client privilege; Respondent cannot waive this privilege, and will not recommend to the City Council that Recommendation 15 be implemented. The fact pattern of each case is unique, and the dissemination of attorney-client communications is approached by the courts on a case-by-case basis. Generally, absent a court order or other clear authority, an attorney has an ethical obligation to zealously guard confidential communications between attorney and client, in whatever form that information takes, including, but not limited to, billing records containing confidential information. Because of the sensitivity of the information and the ethical and statutory requirements bearing on this issue, it is not feasible to state a blanket general rule regarding future disclosure of all billing records. Respondent is obligated to act in the best interest of the City of Lompoc, and therefore must make all reasonable efforts to protect the confidential information communicated between the City and its attorneys unless and until the City Council waives the attorney-client privilege.

Thank you for the opportunity to participate in the 2005-2006 Grand Jury process and to respond to its report.

Very truly yours,

Sharon D. Stuart
City Attorney
City of Lompoc

c: City Council
City Administrator
Management Services Director