

COUNTY OF SANTA BARBARA

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COUNTY COUNSEL

July 14, 2006

Honorable Rodney Melville
Presiding Judge, Santa Barbara Superior Court
312 East Cook St.
Santa Maria, CA 93454-5165

Ted Sten, Foreman
Santa Barbara County Civil Grand Jury
Grand Jury Room
County Courthouse
Santa Barbara, CA 93101

Re: Response to **Report of the 2005-2006 Santa Barbara County Civil Grand Jury:
LEGAL SERVICES IN SANTA BARBARA**

Dear Judge Melville:

The Santa Barbara County Counsel responds to the 2005-2006 Santa Barbara County Civil Grand Jury report "Legal Services in Santa Barbara" as follows.

We thank the Grand Jury for its interest in legal services and agree that legal services to public entities – particularly litigation -- are costly and should be monitored and carefully managed. The findings and recommendations of the Grand Jury follow, with our response in *italics*.

FINDINGS AND RECOMMENDATIONS

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.

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Agree in part. County Counsel provides legal services to the Board of Supervisors and County Departments, Boards and Commissions. In rare cases involving specialized projects and litigation the County will use outside counsel, however, most matters are handled by County Counsel staff. County Counsel estimates litigation costs in good faith, based on the nature of the claim and the number of issues and witnesses. The cost of litigation, particularly where outside counsel is used, or extraordinary discovery or experts are required, sometimes exceeds estimates.

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.

Already implemented. The legal service needs of the County are reviewed through the budget process. County counsel staffing and anticipated revenue, and funding for outside counsel for complex litigation and advisory matters, is provided in the budget. The County has implemented several processes to improve the tracking of litigation and reduce litigation costs, including "Top 25" case review and early mediation or settlement.

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.

Agree in part, disagree in part. Legal services are costly, litigation more so. Discovery and trial are often very expensive, particularly where outside counsel, experts, referees and studies are required. Litigation costs can be planned, managed and contained to an extent. However, the costs of litigation are driven in part by courts and opposing parties. Municipalities lack the ability to control the course and scope of litigation, and thus its cost.

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.

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Already implemented. County litigation costs are subject to review by the Auditor as are other county costs.

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.

This does not apply to the county.

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.

Already implemented. County Counsel negotiates hourly charges or flat fees with clients other than County general fund departments.

Finding 4

The requirements of informed consent appear to be informally satisfied.

Agree. The County Counsel, by statute and case law, may advise more than one county department or public agency. We require outside counsel to obtain informed consent, and recommend to the Board of Supervisors that the County grant informed consent when appropriate.

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.

Already implemented, will implement additional measures. Contracts with outside counsel usually contain a limit on total charges without board of supervisors authority. We are developing additional ways to budget and control litigation costs, such as "roundtable" meetings to get early determination of settlement value.

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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.

Agree in part, disagree in part. The County Counsel uses short, simple agreements retaining outside law firms for particular cases when there is an existing agreement with that law firm that conforms to County standards. Per County policy, contracts for outside legal services must be approved by the Board of Supervisors. The scope of services is clear in any case.

Recommendation 5

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

Already implemented. County Counsel has recently reviewed the commissions whose meetings we attend on a regular basis. Generally, we attend meetings of agencies that make decisions that affect people's rights, and attend meetings of purely advisory agencies on request, to provide training, or where controversial or complex matters are considered.

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.

Agree.

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.

Will be implemented. County Counsel does not agree to minimum charges or pay multiple billing for in-office conferences. We agree that it is desirable to have a formal protocol on billing practices.

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Finding 7

Budgets or caps are rarely used to control legal expenses.

Disagree in part. County contracts with outside counsel for specialized advisory services usually contain caps. Caps on litigation cases generally don't work because the course of litigation is somewhat unpredictable and sometimes requires intense bursts on short notice. It is not prudent to cut corners in the midst of litigation and impracticable to cease using trial counsel in mid-trial. Costs are contained by periodic case review and review of billing.

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.

Already implemented, will implement additional measures. We presently review disbursements. We will improve monitoring of extraordinary discovery costs through early budgeting and roundtable meetings in major cases.

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.

Agree. The County Counsel retains attorneys who have specialized knowledge and demonstrated results. Confidence and trust in outside counsel is a critical factor. Politics plays no part in hiring decisions.

Recommendation 8

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

Already implemented. County contracts require professional liability insurance for outside counsel.

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.

Agree in part. The Board of Supervisors is responsible for hiring counsel to assist county counsel. Except for areas where outside firms have provided good service over time, county counsel practice is to solicit proposals from two or three firms before recommending that the Board engage a law firm. Agree that cost is a greater factor in assigning or contracting for routine repetitive work. County Counsel strives to reduce costs by having routine work done by paralegals not lawyers where possible. CAVEAT there is very little about the type of work practiced by public lawyers that is truly "routine."

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.

Already implemented. County Counsel representation of independent special districts is predicated on a waiver of conflicts between the district and the county.

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.

Agree in part, disagree in part. Special counsel is sometimes needed for complex and difficult matters. Quality legal specialists charge very high hourly rates. The county counsel budget and the litigation designation reflect funding for outside counsel.

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 pay is required to be made be less than the normal meeting cycle plus processing time of the governing board.

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Will be implemented. We believe that in most cases bills can be paid within 30 days and still be subject to adequate review. Generally, Risk Management and County Counsel strive to pay bills as quickly as possible. In some cases it may take more than 30 days to adequately review billings and meet with outside counsel, in part due to timing and distance. Commencing with the next outside counsel contracts, we will ensure that sufficient time is allowed to permit adequate billing review.

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.

Agree.

Recommendation 11

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

Will not be implemented. County Counsel does not have retainers subject to renewal.

Recommendation 12

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

Will not be implemented. The standard functions of county counsel, advice to government agencies, prosecutorial-type civil litigation, and defense of civil suits, are not routine and repetitive. After evaluation, we determined that because of the high priority placed on reducing workers compensation liability and the need to coordinate workers compensation with other employment-related processes, it is more cost-effective to defend workers compensation cases, the major county counsel function that might be considered "routine," in-house. We are also evaluating whether to continue handling bail bond forfeiture matters.

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.

Does not apply to county.

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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.

Already implemented in part, will not be implemented further. In the few situations where informed consent is required, appropriate procedures are followed and the basis for informed consent is recorded in writing. It is not necessary to set forth the basis in the minutes of the board of supervisors.

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.

Will not be implemented. Disclosure of the details of bills relating to pending litigation is resisted because the cost and nature of expenditures can reveal strategy and logistics to adversaries. If request is made, redaction of bills will be attempted on a case by case basis. Bills and other financial records regarding closed litigation is public record.

Again, we thank the Grand Jury for their hard work and their interest in legal services.

Very truly yours,

STEPHEN SHANE STARK
COUNTY COUNSEL