

July 12, 2006

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

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

On behalf of the Board of Trustees, I am submitting the following response to the Santa Barbara County Civil Grand Jury study re: Legal Costs and Expenses.

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. 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.

Agree

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

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.

We received no follow up inquiries on this issue.

Finding 4

The requirements of informed consent appear to be informally satisfied.

Agree

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. This has been a satisfactory approach for us.

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 or documents and renewals are some of the issues relative to retainers that must be carefully negotiated.

Agree. We have not had any disputes or problems with these aspects of legal billing.

Finding 7

Budgets or caps are rarely used to control legal expenses.

Disagree. We do try to manage litigation and potential litigation expenses by agreements with insurance companies that shift cost management of some legal expenses and pool some of the risk of legal costs.

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.

We do not select counsel based on politics. Selection based on past dealings that inspire confidence and trust seems appropriate in certain situations.

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. We have some agreements recognizing this fact that reflect pricing according to whether the work is repetitive and routine or involves litigation and specialized knowledge.

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.

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.

All legal bills are reviewed at the level of Vice President or specially trained manager. Most are reviewed by in house counsel.

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.

Agree. We select outside counsel based on the type and level of service needed. We participate in a consortium that includes management training in an array of legal issues with the goal of preventing problems and reducing exposure.

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.

Agree. We do this. See 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.

Agree. We have some agreements structured in this manner.

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.

Agree

Recommendation 5

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

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.

Agree.

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.

Agree

Recommendation 8

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

Agree

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.

Disagree as this would require violation of confidentiality.

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.

Agree

Recommendation 11

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

Agree

Recommendation 12

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

Disagree. This practice does not necessarily procure the best or most appropriate service.

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.

Agree

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.

Agree

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.

Agree.

Very truly yours,

Susan C. Ehrlich
Vice President
Human Resources and Legal Affairs

G:Personnel/Grand Jury 7-12-06