

CITY OF SANTA MARIA
OFFICE OF THE MAYOR
AND CITY COUNCIL

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July 6, 2006

Honorable Rodney Melville
Presiding Judge, Santa Barbara County Superior Court
312-M East Cook Street
Santa Maria, 93455-5165

**RE: RESPONSE TO THE SANTA BARBARA COUNTY GRAND JURY REPORT
ON LEGAL SERVICES IN SANTA BARBARA, VERY HIGH PRICES FOR
COMPREHENSIVE REPRESENTATION**

The purpose of this letter is to transmit the City of Santa Maria's formal combined response to the above subject report dated May 16, 2006. According to Penal Code Section 933, the City Council has 60 days to reply to the Grand Jury Report and the City Attorney has 90 days. This letter is intended to satisfy both those reporting requirements.

The Grand Jury Report made eleven findings and sixteen recommendations regarding Legal Services in Santa Barbara, Very High Prices for Comprehensive Representation. The following is the City's formal response to the finding:

**RESPONSE TO GRAND JURY FINDING AND RECOMMENDATION REGARDING
LEGAL SERVICES IN SANTA BARBARA, VERY HIGH PRICES FOR
COMPREHENSIVE REPRESENTATION**

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.

City Response: The City of Santa Maria disagrees partially with the finding that actual legal expenses are "often underestimated" and that budgeting "seems to be a mere guess or a deliberate understatement of anticipated or known foreseeable costs." The Grand Jury's Report offers no evidence in support of this finding with respect to the practice of the City of Santa Maria's City Attorney's Office.

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.

City Response: The City of Santa Maria agrees with the finding.

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.

City Response: The City of Santa Maria disagrees partially with the finding as the City submitted no bills pursuant to the Grand Jury's request for documents, but rather, cost totals and budget documents; therefore, this finding does not apply to the City of Santa Maria.

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

City Response: The City of Santa Maria disagrees partially with the findings. Initially, what "informed consent" meant was unclear as it is a concept with meaning in the practice of medicine, not law. To obtain clarification, Deputy City Attorney, Philip Sinco, telephoned the Grand Jury and later spoke with Grand Jury Member, Bill Rosen, who explained that "informed consent" referred to the ethical responsibilities under the California Rules of Professional Conduct regarding avoiding conflicts of interest between an attorney and a client, and the prohibition that an attorney can not undertake a representation that might have adverse effects on a represented client without "informed consent" of the client. Mr. Rosen was referring to Rule 3-310 of the California Rules of Professional Conduct which uses the term "informed written consent." The rule requires that an attorney provide full disclosure to clients with respect to certain professional, business, legal or other relationships that might be adverse to a client's interest, and prohibits representation of more than one client in a matter in which the interests of the clients potentially or actually conflict without "informed written consent." Mr. Rosen advised that the Grand Jury saw some documents that caused them to conclude that disclosure of potential or actual conflicts of interest was done informally without detailed written disclosures.

With this understanding of the meaning of "informed consent," the City disagrees with this finding in that whenever "informed written consent" has been required by Rule 3-310 of the California Rules of Professional Conduct, the City Attorney's Office has fully disclosed all of the requisite information and obtained "informed written consent." The City has no information about the practice in other cities or the County of Santa Barbara.

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.

City Response: The City of Santa Maria disagrees partially with the finding as the City's agreements with outside (retained) counsel adequately describe the nature and scope of the services to be rendered in sufficient detail to assure adequate accountability. The vast majority of the City's agreements with outside counsel are for litigation matters, although outside counsel are also retained on an infrequent basis for consultation or specific action on a particular matter. Each situation where outside counsel is retained requires a different level of detail in the description of the nature and scope of services to be rendered. For example, in cases where outside counsel is retained for personal injury litigation, a brief description of the nature and scope of services is all that is required. In other cases, a detailed description of the nature and scope of services is required, for example, when outside counsel is retained to conduct an internal investigation.

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.

City Response: The City of Santa Maria agrees with the finding.

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

City Response: The City of Santa Maria disagrees partially with the finding as the City has never utilized a "cap" as a budget control measure, but requires outside counsel who are retained for litigation matters to submit an estimated budget at the time of assignment of the case or project to include an estimate of the necessary work and related costs through conclusion of the matter. This information is used to evaluate the performance of the law firm. A law firm that grossly underestimates legal expenses is unlikely to receive another assignment. In addition, this information is used to anticipate and control legal

expenses related to the particular matter. When outside counsel are retained for consultation purposes, a budget is usually not helpful since it is difficult to accurately estimate legal costs when the law firm does not know how much time will be necessary to research the law and provide an analysis of the subject issue. Even in such cases, however, the law firm's bill is reviewed carefully to ensure that the time entries are justified based on the value received to the City by the work performed. Moreover, when the City retains outside counsel for consultation, the agreement includes a provision that either party may terminate the agreement, upon written notice, at any time for any reason.

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.

City Response: The City of Santa Maria agrees with the finding.

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.

City Response: The City of Santa Maria disagrees partially with the finding. The City agrees with this finding as it applies to the hiring of the City Attorney, but does not agree with respect to the hiring of outside counsel for other purposes. In the City of Santa Maria, the decision regarding whom to hire has been delegated to the City Attorney.

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.

City Response: The City of Santa Maria disagrees partially with the finding as the City does not agree that "often the cost of outside counsel is not included in the annual General Fund budget." This amount is estimated each year and administered by the Department of Administrative Services as part of risk management practice and activities.

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.

City Response: The City of Santa Maria disagrees partially with the finding as the City audits and reviews each bill from all retained counsels.

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.

City Response: The recommendation has been implemented. The City Attorney's Office ("CAO") has already reviewed and defined the level of legal services the City of Santa Maria requires and has determined that outside counsel should be retained for most litigation matters (in-house attorneys occasionally will litigate cases, but rarely). Several years ago, a determination was also made to assign Municipal Code misdemeanor and infraction prosecutions to outside counsel on the basis that it would promote efficiency of the three in-house attorneys employed in the CAO and was an economically beneficial arrangement.

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.

City Response: The recommendation has been implemented as all bills for legal services from outside counsel are reviewed by an attorney in the CAO. Questionable, erroneous, and unclear time entries of outside counsel are noted and brought to the attention of the particular law firm or lawyer. These amounts are not paid unless the law firm can clarify and/or justify the amount billed to the City.

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.

City Response: The recommendation will not be implemented because it is not warranted as the City does not assign a significant amount of its "routine or monthly" legal work to outside counsel as this work is performed by its in-house legal counsel. The exception to this is the assignment of criminal prosecution of Municipal Code violations to outside counsel. Under this arrangement, a private attorney goes to the Superior Court once per week (on Thursdays, at the court's request). The arraignments all concern citations for violations of the City's Municipal Code that are issued by the City's police officers, the Recreation and Parks Departments' Park Services Officers, or by County Animal Control Officers (e.g., leash law violations, barking dog, etc.). Although this work can be viewed as "routine," the amount of prosecution required varies widely, thus making a flat fee arrangement problematic. In addition, this work is limited in scope, thus there is little or no need to define with precision the method of authorizing additional services since they are seldom, if ever, required or provided.

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.

City Response: The recommendation will not be implemented as "caps" are not commonly used by civil litigation firms, particularly those few local firms capable of adequately handling the City's tort litigation. "Caps" might be more appropriate for a city that retains outside counsel for city attorney services (which are performed in-house in Santa Maria). Accordingly, this recommendation is not warranted in the City of Santa Maria.

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

City Response: The recommendation has been implemented as the CAO reviews the necessity of attendance by counsel at advisory board meetings. Legal counsel seldom attends these meetings, however, when appropriate, counsel does attend such meetings.

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.

City Response: The recommendation has been implemented as the CAO considers billing practices, minimum charges, and multiple billing for in-office conferences when it retains outside counsel. Part of cultivating professional relationships with outside counsel involves negotiating such matters and obtaining their willingness to comply with the City's Billing and Retention Policy. The City does not have a need presently to negotiate minimum hours or carryover of unused monthly hours since the City does not utilize monthly retainer agreements in which such provisions would be included, nor does the City have any expectation that such provisions will ever be included in any of its agreements with outside counsel (although, such provisions would be considered in an appropriate context).

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.

City Response: The recommendation has been implemented as the CAO reviews all bills received from outside counsel. All costs and expenses charged to the City are reviewed in addition to the time entries for work performed by attorneys and paralegals. The City's Billing and Retention Policy has provisions regarding these types of expenses and requires pre-approval for some of them.

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

City Response: The recommendation has been implemented as the City generally requires that professionals carry one million dollars of professional liability insurance, including attorneys who provide

services to the City. Most attorneys carry this type of insurance, with comparable coverage limits. However, since "one size does not fit all" when it comes to the delivery of legal services, the CAO would not assign the City's legal defense in a litigation matter if the lawyer or law firm did not have an adequate amount of professional liability coverage.

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.

City Response: The recommendation will not be implemented because it is not warranted since the burden of assuring that an attorney does not engage in representation(s) that might create a conflict of interest between the attorney and a client lies squarely on the shoulders of the attorney. The California Rules of Professional Conduct provide specific guidance on such matters. Putting the onus of conflict checking on municipalities and districts would create more administrative burdens and costs that simply need not be borne or incurred by them. Accordingly, this recommendation is not warranted in the City of Santa Maria.

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.

City Response: The recommendation has been implemented as the City pays invoices received from its outside counsel within 30 days in most cases. The City Council has delegated the responsibility of monitoring outside counsel, including reviewing and authorizing of payment of their invoices, to the CAO. Thus, the City Council does not authorize payment of the bills of outside legal counsel. This arrangement saves a great deal of time and permits a review of all bills for legal services along with issuance of a check to occur within 30 days of receipt in most cases. In those few situations where more time is required to pay a bill than 30 days, the City takes that time. The City would not retain outside counsel that insisted on receipt of payment within 30 days of receipt of an invoice.

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

City Response: The recommendation will not be implemented because it is not warranted. The City's agreements with its outside counsel retained for consultation matters provide that either party may terminate the agreement at any time. If a new "rate sheet" is received that notifies the City of an increase in hourly rates, the City has the right to cancel the agreement upon written notice. This provides an adequate method of controlling the cost.

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

City Response: The recommendation will not be implemented because it is not warranted since the City has a full-time, in-house legal staff to handle day-to-day routine and repetitive 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.

City Response: The recommendation has been implemented as the CAO and City Manager's Office (including the Director of Administrative Services and the Risk Manager) monitor and evaluate the need and appropriateness of legal service costs at least once per year in connection with the budget process.


Recommendation 14: In situations where informed consent is required, the rules related to informed consent should be strictly enforced upon which informed consent is given should be fully set forth in the minutes of the governing body.

City Response: The recommendation has been implemented as whenever "informed written consent" is required pursuant to Rule 3-310 of the California Rules of Professional Conduct, the CAO ensures strict compliance and entry of this in the minutes of the government body.

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.

City Response: The recommendation has been implemented as the City allows inspection of all bills from outside counsel after redacting any confidential, attorney-client privileged or work product information.

The City of Santa Maria welcomes this opportunity to respond to the Grand Jury Report.



LARRY LAVAGNINO
Mayor

C: Santa Barbara County Civil Grand Jury Foreman