

**Allan Hancock Joint Community College District
Response to Report of 2005-2006 Santa Barbara County Civil Grand Jury**

LEGAL SERVICES IN SANTA BARBARA

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:

Allan Hancock College attempts to budget for legal services based on anticipated need. Legal expenses are primarily related to collective bargaining activities, and unit contracts are three-year agreements with annual reopeners for a limited number of contract articles. In years when the entire contract is renegotiated, the district takes the increased negotiation time into consideration when building the budget for legal expenses. When unanticipated events occur that lead to the need for legal advice, district staff consult with the elected board of trustees prior to incurring additional costs. Fiscal year 2004-2005 was such a year. Based on events that occur subsequent to the September budget adoption, the district makes a recommendation to the elected board of trustees to revise the original budget to more accurately reflect actual spending needs. Having spent only \$39,867 or .104% (.00104) of the budget in 2003-2004, developing a budget of \$53,913 for legal fees in 2004-2005 appeared realistic.

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:

Other than for construction related litigation, legal expenses related to property/liability issues are managed through the joint powers authority (JPA) of which the district is a member. In these events the costs of litigation are born by the JPA with input and direction provided by the district. This approach has had a significant impact on controlling legal costs. As noted in the summary report by the 2005-2006 Santa Barbara County Civil Grand Jury, Allan Hancock College's legal expenses of \$156,001 were only .327% (.00327) of the 2004-05 budget.

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:

Allan Hancock College does delete confidential information contained in legal bills and submits only summary information for accounts payable purposes. Detailed reports are reviewed and approved by the Associate Superintendent/ Vice President of Administrative Services for confirmation of services provided and expenses incurred. Construction related invoices are reviewed by the Executive Director, Facilities and Operations.

Finding 4

The requirements of informed consent appear to be informally satisfied.

Response:

Agreed.

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:

Agreed. Allan Hancock College does have agreements for legal services but does not enter into typical retainer agreements where fees are paid in advance of services. Allan Hancock College pays legal fees based on actual hours performed.

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:

Agreed.

Finding 7

Budgets or caps are rarely used to control legal expenses.

Response:

Budgets alone cannot control legal expenses. Allan Hancock College does budget for anticipated and predictable legal costs, but in the event that something occurs that requires legal counsel, the elected board of trustees is notified of the event. Careful risk management efforts and addressing issues early have had the greatest effect on controlling legal 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:

Agreed other than for political reasons.

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:

Agreed. Allan Hancock College does not typically use legal counsel for routine repetitive work.

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:

In the case of Allan Hancock College the cost of outside counsel is included in the annual general fund budget. Legal counsel for construction purposes is included in the district's Capital Outlay Fund.

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:

Allan Hancock College reviews all bills for legal services and confirms services provided prior to authorizing payment.

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.

Response:

Agreed. Allan Hancock College believes that this is the process that it follows.

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:

Agreed, this is the process followed by Allan Hancock College.

Recommendation 3

Municipalities and districts should review the basic fee 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:

Agreed. Allan Hancock College does not contract with legal firms for routine or monthly 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:

Budgets alone cannot control legal expenses. Allan Hancock College does budget for anticipated and predictable legal costs but in the event that something occurs that requires legal counsel the elected board of trustees is notified of the event. Careful risk management efforts and addressing issues early have had the greatest effect on controlling legal expenses

Recommendation 5

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

Response:

Agreed. Allan Hancock College seldom invites legal counsel to meetings of the board of trustees unless that attendance is requested by the board of trustees.

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:

Agreed. Allan Hancock College does have agreements for legal services but does not enter into typical retainer agreements where fees are paid in advance of services. Allan Hancock College pays legal fees based on actual hours performed and therefore, is not subject to minimum charges or hours and has no unused monthly hours.

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.

Response:

Agreed.

Recommendation 8

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

Response:

Agreed.

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:

Professional standards related to client representation and issues of confidentiality should be addressed.

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.

Response:

Allan Hancock College's agreement for special services with Liebert Cassidy Whitmore contains a clause that states "Payment by District against monthly billings is due upon receipt of statements, and is considered delinquent if payment is not received within thirty (30) days of the date of the invoice." There is not a clause that would permit additional charges in the event the district was unable to meet this requirement. Typically this timing is not a problem for the district as the board of trustees meets monthly and processing time is routine. Any questions related to the billings are typically resolved quickly and have not caused any undue delays in processing payments.

Recommendation 11

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

Response:

Allan Hancock College does not currently have any retainer agreements but does have agreements for special services that are billed on an hourly basis. The

district agrees that complete agreements should be renewed periodically but it does not appear efficient with a relatively new agreement of less than three years and no proposed change from either party other than rates to renew the full agreement.

Recommendation 12

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

Response:

Allan Hancock College does not use counsel to handle routine, repetitive matters. If the district were to do so, issuing a request for proposal would be an appropriate step to take.

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.

Response:

Legal services in 2004-05 for Allan Hancock College were only .327% of the budget. While this amount did not reach or exceed 1% of the budget, the district does monitor and evaluate need and appropriateness of services.

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:

It is agreed that rules related to informed consent should be enforced. Issues that would typically involve communications with attorneys are covered in closed session discussions with the board of trustees as authorized by the Brown Act. Minutes of closed session discussion items are not public documents.

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:

Issues related to attorney/client privilege would need to be appropriately addressed.