

August 1, 2006

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

Re: Response to Grand Jury Report – “Legal Services in Santa Barbara, Very High Prices for Comprehensive Representation”

Dear Judge Melville:

This response is made in my capacity as City Attorney for the City of Buellton. This response is based upon facts and circumstances known to me regarding the City of Buellton and is based upon the best of my information and belief.

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 to Finding 1

Agree, except the last sentence. Buellton has never deliberately understated its anticipated unknown foreseeable costs.

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' thrusts.

Response to Finding 2

Generally agree. On occasion Buellton as other cities must spend beyond budgeted amounts to protect the public interest.

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 to Finding 3

I'm not aware what confidential information was deleted or redacted by other municipalities. There are occasions when based upon an ad hoc basis the public interest is better served by not automatically providing information contained in legal bills.

Finding 4

The requirements of informed consent appear to be informally satisfied.

Response to Finding 4

Suggest the words "informed consent" be defined. Depending on the definition, probably 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.

Response to Finding 5

I'm unaware of retainers utilized by other municipalities that have responded to the Grand Jury. Agree the scope of services should be provided in sufficient detail to assure adequate accountability.

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 to Finding 6

Agree.

Finding 7

Budgets or caps are rarely used to control legal expenses.

Response to Finding 7

Generally agree. It is unrealistic to believe budgets or caps can totally control legal expenses. They are tools. It may be more effective to try and obtain a range of legal expenses depending on certain directions the litigation might take. On occasion a phasing program is helpful.

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 to Finding 8

Agree.

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 to Finding 9

Agree.

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 to Finding 10

Agree. Outside counsel's costs cannot always be included in annual general fund budgets as such costs may arise from litigation that did not exist at the time of the budget preparation and approval.

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 to Finding 11

The City Manager and the City Attorney of Buellton review all invoices for other legal counsel services and invoices.

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 to Recommendation 1

Agree.

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 to Recommendation 2

Agree with first sentence. Remainder of the recommendation is too broad with which to agree or disagree.

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.

Response to Recommendation 3

Agree.

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 to Recommendation 4

Disagree. Municipalities should use budgets, but caps are unrealistic if not absolutely impossible for significant litigation. At some point, any city could stop any litigation if desired and a cap is not needed to reach this termination. A cap could leave the City at a disadvantage if its adversary could ascertain the extent of the City's commitment to the litigation.

Recommendation 5

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

Response to Recommendation 5

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.

Response to Recommendation 6

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.

Response to Recommendation 7

Agree.

Recommendation 8

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

Response to Recommendation 8

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.

Response to Recommendation 9

Agree.

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 to Recommendation 10

Agree and suggest time limitation be 45 days. This limitation is necessary in as much as the law firms are carrying receivables during the non payment period and their ability to do so can be limited. This is especially true if a city is using a small local law firm to lessen its costs.

Recommendation 11

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

Response to Recommendation 11

Generally agree, however, the best practice is what meets the specific needs of the client and the law firm.

Recommendation 12

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

Response to Recommendation 12

Agree.

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.

Response to Recommendation 13

One percent (1%) is irrelevant. Legal services should always be monitored and evaluated to determine need and appropriateness no matter what percent of the 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.

Response to Recommendation 14

Probably agree depending on the definition of “informed consent”.

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 to Recommendation 15

Bills and other records for legal services should generally be deemed public records after deleting confidential information. There are circumstances that can arise that make immediate availability of such records detrimental to a City and the public’s best interest. Each situation should be addressed on an ad hoc basis.

I appreciated the opportunity to meet with some of the Grand Jury Members and to respond to this Grand Jury Report.

Sincerely,

Don Kircher
City Attorney
City of Buellton

c: Santa Barbara County Civil Grand Jury Foreman
Buellton City Council