



City of Santa Barbara

Office of the City Attorney

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August 17, 2006

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The Honorable Judge Rodney Melville
Presiding Judge,
Santa Barbara Superior Court
312-M East Cook Street
Santa Maria, California 93455-5156

Santa Barbara County Civil Grand Jury
Attention: Ted Sten, Foreman
1100 Anacapa Street
Santa Barbara, California 93101

This letter is in response to the Civil Grand Jury's letter to the City Attorney of the City of Santa Barbara dated May 16, 2006 wherein the Grand Jury requested the City Attorney's response to its 2005/2006 report entitled "Legal Services in Santa Barbara, Very High Prices for Comprehensive Representation." It is provided pursuant to the requirements of state Penal Code Section 933(c).

Please contact me should you have any questions concerning the City response or should the Grand Jury need anything further from the City of Santa Barbara.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Stephen P. Wiley".

Stephen P. Wiley
City Attorney
City of Santa Barbara

Enclosure

cc: James L. Armstrong, City Administrator
City Clerk, City of Santa Barbara

Response of the City Attorney of the city of Santa Barbara to the Report of the 2005-2006 Santa Barbara County Civil Grand Jury entitled "Legal Services in Santa Barbara, Very High Prices for Comprehensive Representation."

This response is provided in accordance with state Penal Code Section 933.05(b) which requires public entities (other than county entities and county officials) to submit a written response to each applicable finding and recommendation within ninety (90) days of the date of the Grand Jury's report.

(The City Attorney's response is in bold face italic type following each individual finding or recommendation.)

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.

The City makes every effort to accurately budget for anticipated litigation expenses for pending litigation. However, by its nature, it is not always possible to foresee the full extent of expenses which may arise in defending the City. It is particularly problematic to predict and budget for litigation defense expenses which arise during a fiscal year but after a budget has been adopted. In such cases, supplemental budget appropriations are typically required. Under no circumstances does the City budget based on a mere guess nor does it deliberately underestimate those litigation expenses which can be reasonably anticipated.

The city of Santa Barbara, whether through its City Attorney's office or in City contracting with special counsel law firms, has not exceeded its annual budget estimate for City legal services in at least the last twenty (20) years and probably for a great many years beyond that.

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.

While it is true that legal services, in particular litigation services, are costly in the United States, the city of Santa Barbara has never allowed uncontrolled, unsupervised, or clearly excessive spending on legal services being provided to the City. In fact, Santa Barbara's

approach of having an in-house city attorney (especially of having an assigned in-house litigation attorney and City litigation support staff) has apparently resulted in keeping the City's total budget for legal services (both litigation and non-litigation services) at around one percent (1%) or less of the City's total combined annual budget for many years.

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.

The city of Santa Barbara would only assert the confidentiality of some portion of a City legal bill if the information being demanded would unduly disclose the City's litigation strategy to the detriment of the City's position in pending (i.e., unresolved) litigation.

Finding 4

The requirements of informed consent appear to be informally satisfied.

It is not entirely clear to what this finding is referring. However, on the assumption it refers to a lawyer retained by a public agency exceeding his or her client authority, this has not been a problem for the city of Santa Barbara, particularly with its in-house City Attorney's office and that office's regular interaction with the City Administrator and the City Council, as well as its close supervision of the City's special legal counsel.

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.

The city of Santa Barbara has a standard professional services agreement for use in retaining special legal counsel and has used the same basic agreement for many years. Among other customary provisions protective of the City (such as full indemnification and insurance for professional malpractice), the standard agreement requires detailed monthly billings and billing review under the direct supervision by the City Attorney. The standard agreement also always contains a monetary limit on the amount of total compensation (including all reimbursements for expenses) which may be made to the attorney or law firm, which limit cannot be amended without a specific written approval and express approval of the increase by the City Council.

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.

The City's response is the same as that given for Finding 5.

Finding 7

Budgets or caps are rarely used to control legal expenses.

The City's response is the same as that given for Finding 5.

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.

I have been employed as an attorney for the City for over 23 years; I can advise that, to the best of my knowledge, no special legal counsel for the City has ever been retained for any reason other than their demonstrated expertise, experience, and professionalism in the particular area of the law for which the City needs advice or legal representation.

Finding 9

Hiring is distinctly a function of the governing board and requests for proposals do not seem to be generally used. The lowest costs 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.

The City agrees with this finding. Again, however, the vast majority of all legal advice and representation the City receives is from its in-house City Attorney's office. When special legal counsel or law firms are retained, the retention is always on the basis of the lawyer's (or firm's) demonstrated expertise and professionalism and is the result of an express recommendation to the City Council or City Administrator from the City Attorney.

Finding 10

Special services are required in connection with complex, difficult, time consuming and specialized areas of 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.

The City does not disagree with this finding, especially regarding the difficulty of predicting the ultimate cost of litigation or the difficulty of budgeting for such contingencies.

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.

The city of Santa Barbara City Attorney's office reviews all bills for legal services (and reimbursement in connection therewith) closely and it must specifically approve any compensation paid to outside counsel.

REPORT RECOMMENDATIONS:

The City agrees with all of the recommendation made in the Grand Jury's Report. In fact, the City and its City Attorney's office already does all of the things recommended by the Grand Jury and has done so for many years.