

June 20, 2006

The Honorable Rodney S. Melville  
Judge of the Superior Court  
312-M East Cook Street  
Santa Maria, California 93455-5165

Mr. Ted Sten, Foreman  
Santa Barbara County Civil Grand Jury  
1100 Anacapa Street  
Santa Barbara, California 93101

RE: 2005-2006 Santa Barbara County Civil Grand Jury  
Report Entitled "Legal Services in Santa Barbara:  
Very High Prices for Comprehensive Representation"

Dear Judge Melville and Mr. Sten:

Please accept this letter as the formal response of the City Council of the City of Lompoc to the above-referenced report dated May 16, 2006.

The City Council has been asked by the Grand Jury to respond to eleven Findings and fifteen Recommendations, and accordingly submits the information below.

## **I. 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, especially when the municipality or district is involved in litigation.**

Respondent agrees with this portion of Finding 1.

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**Often budgeting seems to be a mere guess or a deliberate understatement of anticipated or known foreseeable costs.**

Respondent disagrees with this Finding as to the City of Lompoc. The City's biennial budget precisely allocates funds to pay for the anticipated, known, and foreseeable costs of necessary legal services – including the costs of in-house legal staff, retained attorneys practicing in various legal specialties, quasi-legal services such as workers compensation administration, etc. The City's Budget is approved by the City Council after lengthy consultation among the City Attorney, the City Administrator, the City's Management Services Director, and other key staff. Formal, public Council approval is required for transfers of \$10,000 or more between accounts after the Budget has been approved. The City of Lompoc budgets realistic amounts for legal services, based upon available information and past practices, and has never, to the best of Respondent's knowledge, deliberately understated fiscal allocations for legal services.

**Finding 2. Legal services are very costly. Litigation is even more costly.**

Respondent agrees with this portion of Finding 2.

**Litigation is often an open checkbook for the municipality or district, which has little or no ability to control the costs' thrust.**

Respondent disagrees with this Finding as to the City of Lompoc. The City's management staff, as guided by the City Attorney's Office in accordance with the general policy of the City Council, controls legal costs with all practical available tools. These include preventive advice, consultation at early stages, staff training to keep abreast of legal developments, sound analyses of the merits of tort claims, development of case management plans and strategies, Council approval of the retention of outside counsel, monitoring of outside counsel services, scrutiny of legal invoices, maintenance of adequate liability insurance, etc.

The City Council takes seriously its responsibility for management of public funds and is mindful of financial issues whenever decisions are made regarding legal services. Although a defendant does not enjoy total control of the course of a lawsuit, Respondent does not treat litigation as an open checkbook or allow runaway costs.

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**Finding 3. Although confidential information contained in legal bills could be deleted or redacted, some municipalities 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.**

Respondent disagrees with this Finding as to the City of Lompoc: all documents requested were without redactions.

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

Respondent disagrees with this Finding as to City of Lompoc. The City Council or senior management resolve potential conflicts of interest on a case-by-case basis, as they may arise, with a meticulous examination of the facts of the matter so that appropriate action may be taken if necessary. This procedure has been satisfactory for a long time, due to the small number of referrals to outside 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.**

As to the City of Lompoc, Respondent disagrees with this Finding. The City uses a basic retention agreement which is customized for each vendor of legal services. The Agreement is not complex, but clearly documents the services to be supplied so that the quality of vendor performance can be determined.

**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.**

Respondent agrees with this Finding.

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

Respondent disagrees with this Finding as to the City of Lompoc. As described in more detail in the response to Finding 1, the City very carefully budgets for the costs of its legal services and monitors the expenditures from the budgeted funds.

**Finding 8. Counsels are selected on the basis of various objective criteria such as qualifications, competence, ability and expertise . . .**

As to the City of Lompoc, Respondent agrees with this part of the Finding.

**... and on subjective criteria such as politics, . . .**

As to the City of Lompoc, Respondent disagrees that politics is a selection factor in the City Council's choice of legal counsel.

**. . . confidence, and trust.**

Respondent agrees that confidence and trust are selection criteria – and that evaluation of these criteria are essential to a satisfactory attorney-client relationship. A potential client's confidence and trust in an applicant attorney are positive rather than negative factors in the selection process.

**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.**

Respondent agrees with this Finding, although the City of Lompoc does competitively procure professional and paraprofessional services to the extent practical in appropriate cases and specialty areas. The cost of services is an essential component of the selection process, and, because of the limitations of budgeted funds, unnecessary services are not procured.

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**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 costs of legal services. Often the cost of outside counsel is not included in the annual general fund budget.**

Respondent disagrees with this Finding as to the City of Lompoc, as stated in the response to Finding 1.

**Finding 11. The level of audit and review of legal service bills varies. Some municipalities or districts closely review bills and services provided. . . .**

Respondent agrees with this Finding. All invoices for legal services (paraprofessional as well as professional) rendered to the City of Lompoc are carefully reviewed prior to payment, either by the City Attorney's Office or by both the City Attorney staff and the department heads of the offices or divisions directly receiving the invoiced services. Invoices are not paid until they have been approved by appropriate staff. Invoices and their supporting procurement documents also are audited annually by the City's outside auditing firm.

**. . . Others rarely question the need, cost or amount of such bills.**

As set forth above, Respondent disagrees with this Finding as to the City of Lompoc.

## **II. 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.**

This Recommendation has been fully implemented in the City of Lompoc, as stated in the response to Finding 9.

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**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.**

This Recommendation is in effect in the City of Lompoc, as noted in the 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.**

This Recommendation is in effect in the City of Lompoc.

**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.**

This Recommendation has been implemented in the City of Lompoc, as noted in the response to Finding 2.

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

This Recommendation is followed in the City of Lompoc. The necessity for attendance by the City's limited professional legal staff at meetings of the City's twelve advisory boards, committees, and commissions is continually reviewed.

**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.**

This Recommendation is in effect in the City of Lompoc and is used when appropriate. Because of the full-time employment of two staff attorneys, however, the concept of minimum monthly fees for a specified number of hours of service presently has no bearing on the costs of Lompoc's legal services.

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**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.**

This Recommendation is in effect in Lompoc, as described in the response to Finding 11.

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

This Recommendation has been partially implemented in the City of Lompoc, and will be fully implemented as each retainer agreement expires.

**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 interest 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.**

As noted in the Response to Finding 4, Respondent has implemented this Recommendation.

**Recommendation 10. Retainers should provide for payment with a period longer than 30 days without penalty to permit full audit of services. In no event should the period within which pay [sic] is required to be made be less than the normal meeting cycle plus processing time of the governing board.**

This Recommendation is followed in the City of Lompoc. The City virtually never is assessed penalties for late payment of invoices.

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

This Recommendation will be implemented as each legal services contract expires.

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

Respondent has implemented this Recommendation, as noted in the response to Finding 9.

**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.**

This Recommendation has been in effect in the City of Lompoc for many years, as borne out by the fact that the percentage of Lompoc's budget spent for legal services in 2004-2005 was only .0064. The amount budgeted for legal services in 2005-2006 constitutes only .0080% of the City's total 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.**

The rules of conflict of interest are strictly enforced in the City of Lompoc. However, details of decisions related to informed consent generally have not been included in the minutes of City Council meetings. This Recommendation will be implemented as the issue arises from time to time in the future.

**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.**

This Recommendation will not be implemented. As holder of the attorney-client privilege, Respondent believes that a blanket general advance waiver of this privilege is not prudent. Respondent notes, however, that this position does not foreclose public access to any confidential information that the City Council may choose to disclose, or consent to disclose, on a case-by-case basis in the future.



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Thank you for the opportunity to respond to the 2005-2006 Grand Jury Report. We were pleased to note that the costs of Lompoc's legal services as a percentage of its total budget were the lowest of all of the seven incorporated cities in Santa Barbara County.

Councilmembers DeWayne Holmdahl, Janice Keller, Will Schuyler, and Mike Siminski join me in extending our appreciation for the valuable information contained in the Report.

Very truly yours,

Dick DeWees, Mayor  
City of Lompoc

c: City Administrator  
City Attorney